

AMENDED IN SENATE AUGUST 22, 2005

AMENDED IN SENATE AUGUST 15, 2005

AMENDED IN SENATE JUNE 20, 2005

AMENDED IN SENATE MAY 9, 2005

SENATE BILL

No. 678

Introduced by Senator Ducheny

February 22, 2005

An act to amend Sections ~~3040~~, 3041, 7821, 7822, ~~8616.5~~, 8620, 8710, and 9210 of, to add Sections 7892.5, 7907.3, 8606.5, 8619.5, 9208, and 9209 to, to add Part 3 (commencing with Section 170) to Division 1 of, and to repeal Section 7810 of, the Family Code, to amend Sections 1510, 1511, 1513, 1516.5, and 1601 of, to add Sections 1449, 1456, 1457, ~~1458~~, 1460.2, 1474, and 1500.1 to, and to repeal Section 2112 of, the Probate Code, and to amend Sections 100, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 305.5, 317, 361, ~~361.4~~, 366, 366.26, 727.4, 10553.1, and 16507.4 of, to add Sections 110, 224, 224.1, 224.2, 224.3, 224.4, 224.5, 224.6, ~~360.8~~, 361.31, and 361.7 to, and to repeal Section 360.6 of, the Welfare and Institutions Code, relating to Indian children, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 678, as amended, Ducheny. Indian children.

Existing federal law, the Indian Child Welfare Act, governs the proceedings for determining the placement of an Indian child when that child is removed from the custody of his or her parent or guardian. Existing law authorizes tribes recognized under federal law to intervene in these proceedings.

Existing provisions of state law govern child custody proceedings, adoption proceedings, including postadoption contact agreements, dependency proceedings, including termination of parental rights, the voluntary relinquishment of a child by a parent, and guardianship proceedings. Existing law recognizes that the Indian Child Welfare Act applies if the subject of these proceedings is or may be an Indian child and specifies conforming procedures in these cases with regard to the right to notice and intervention accorded the child's tribe and the standard of proof applied in evaluating the evidence submitted, among other things.

This bill would revise, recast, and expand various provisions of state law to, among other things, apply to certain children who do not come within the definition of an Indian child for purposes of the Indian Child Welfare Act, and would provide that a parent, Indian custodian, or tribe may intervene in child custody proceedings involving children with Indian ancestry, as specified. The bill would provide that an Indian child's parent's consent to adoption or guardianship is invalid unless it meets specified standards. The bill would ~~require a court to appoint legal counsel to represent an~~ *specify that if an* Indian custodian or biological parent of an Indian child in guardianship proceedings ~~if that custodian or parent~~ lacks the financial ability to retain counsel and requests that appointment, *certain provisions of the Indian Child Welfare Act regarding court-appointed counsel would apply.*

Existing law also requires, until January 1, 2010, a social worker to make a home visit and conduct a criminal records check of persons living in a home before placing the child in the home. Existing law creates certain notification requirements for probation officers and social workers in child custody cases.

This bill would delete that termination date, thereby making that provision effective indefinitely. This bill would require probation officers and social workers to provide additional notices in cases involving Indian children.

Because this bill would impose additional duties on social workers and other county employees, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Part 3 (commencing with Section 170) is added to Division 1 of the Family Code, to read:

PART 3. INDIAN CHILDREN

170. (a) As used in this code, unless the context otherwise requires, the terms “Indian,” “Indian child,” “Indian child’s tribe,” “Indian custodian,” “Indian organization,” “Indian tribe,” “reservation,” and “tribal court” shall be defined as provided in Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(b) When used in connection with an Indian child custody proceeding, the terms “extended family member” and “parent” shall be defined as provided in Section 1903 of the Indian Child Welfare Act.

(c) “Indian child custody proceeding” means a “child custody proceeding” within the meaning of Section 1903 of the Indian Child Welfare Act, including a voluntary or involuntary proceeding that may result in an Indian child’s temporary or long-term foster care or guardianship placement if the parent or Indian custodian cannot have the child returned upon demand, termination of parental rights, or adoptive placement. An “Indian child custody proceeding” does not include a proceeding under this code commenced by the parent of an Indian child to determine the custodial rights of the child’s parents, unless the proceeding involves a petition to declare an Indian child free from the custody or control of a parent or involves a grant of custody to a person or persons other than a parent, over the objection of a parent.

(d) If an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe, the court ~~may~~ *shall* make a determination, in writing together with the reasons for it, as to which tribe is the Indian child's tribe *for purposes of the Indian child custody proceeding*. ~~If the court makes that finding, it shall do so~~ *The court shall make that determination as follows:*

(1) If the Indian child is or becomes a member of only one tribe, that tribe shall be designated as the Indian child's tribe, even though the child is eligible for membership in another tribe.

(2) If an Indian child is or becomes a member of more than one tribe, or is not a member of any tribe but is eligible for membership in more than one tribe, the tribe with which the child has the more significant contacts shall be designated as the Indian child's tribe. In determining which tribe the child has the more significant contacts with, the court shall consider, among other things, the following factors:

(A) The length of residence on or near the reservation of each tribe and frequency of contact with each tribe.

(B) The child's participation in activities of each tribe.

(C) The child's fluency in the language of each tribe.

(D) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes.

(E) Residence on or near one of the tribes' reservations by the child's parents, Indian custodian or extended family members.

(F) Tribal membership of custodial parent or Indian custodian.

(G) Interest asserted by each tribe in response to the notice specified in Section 180.

(H) The child's self identification.

(3) If an Indian child becomes a member of a tribe other than the one designated by the court as the Indian child's tribe under paragraph (2), actions taken based on the court's determination prior to the child's becoming a tribal member shall continue to be valid.

175. (a) The Legislature finds and declares the following:

(1) There is no resource that is more vital to the continued existence and integrity of recognized Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe. The state is committed to

1 protecting the essential tribal relations and best interest of an
2 Indian child by promoting practices, in accordance with the
3 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and other
4 applicable law, designed to prevent the child's involuntary
5 out-of-home placement and, whenever the placement is
6 necessary or ordered, by placing the child, whenever possible, in
7 a placement that reflects the unique values of the child's tribal
8 culture and is best able to assist the child in establishing,
9 developing, and maintaining a political, cultural, and social
10 relationship with the child's tribe and tribal community.

11 (2) It is in the interest of an Indian child that the child's
12 membership in the child's Indian tribe and connection to the
13 tribal community be encouraged and protected, regardless of
14 ~~whether any of the following:~~

15 (A) ~~The Whether the~~ child is in the physical custody of an
16 Indian parent or Indian custodian at the commencement of a
17 child custody proceeding.

18 (B) ~~The Whether the~~ parental rights of the child's parents have
19 been terminated.

20 (C) ~~The Where the~~ child has resided or been domiciled ~~on an~~
21 ~~Indian reservation.~~

22 (b) In all Indian child custody proceedings the court shall
23 consider all of the findings contained in subdivision (a), strive to
24 promote the stability and security of Indian tribes and families,
25 comply with the federal Indian Child Welfare Act, and seek to
26 protect the best interest of the child. Whenever an Indian child is
27 removed from a foster care home or institution, guardianship, or
28 adoptive placement for the purpose of further foster care,
29 guardianship, or adoptive placement, placement of the child shall
30 be in accordance with the Indian Child Welfare Act.

31 (c) A determination by an Indian tribe that an unmarried
32 person, who is under the age of 18 years, is either (1) a member
33 of an Indian tribe or (2) eligible for membership in an Indian
34 tribe and a biological child of a member of an Indian tribe shall
35 constitute a significant political affiliation with the tribe and shall
36 require the application of the federal Indian Child Welfare Act to
37 the proceedings.

38 ~~(d) (1) If the Indian Child Welfare Act applies to a proceeding~~
39 ~~under this code, to the extent that this code or the Adoption and~~
40 ~~Safe Families Act of 1999, (P.L. 105-89) is inconsistent or in~~

1 ~~conflict with the Indian Child Welfare Act, the provisions of the~~
2 ~~Indian Child Welfare Act shall prevail.~~

3 ~~(2)~~

4 (d) In any case in which this code or other applicable state or
5 federal law provides a higher standard of protection to the rights
6 of the parent or Indian custodian of an Indian child, or the Indian
7 child's tribe, than the rights provided under the Indian Child
8 Welfare Act, the court shall apply the higher standard.

9 (e) Any Indian child, the Indian child's tribe, or the parent or
10 Indian custodian from whose custody the child has been
11 removed, may petition ~~any court of competent jurisdiction~~ *the*
12 *court* to invalidate an action in an Indian child custody
13 proceeding for foster care, guardianship placement, or
14 termination of parental rights if the action violated Sections
15 1911, 1912, and 1913 of the Indian Child Welfare Act (25 U.S.C.
16 Sec. 1901 et seq.).

17 177. (a) In an Indian child custody proceeding, the court
18 shall apply Sections 224.2 to 224.6, inclusive, and Sections
19 305.5, 361.31, and 361.7 of the Welfare and Institutions Code,
20 and the following rules from the California Rules of Court, as
21 they read on January 1, 2005:

22 (1) Paragraph (7) of subdivision (b) of Rule 1410.

23 (2) Subdivision (i) of Rule 1412.

24 (b) In the provisions cited in subdivision (a), references to
25 social workers, probation officers, county welfare department, or
26 probation department shall be construed as meaning the party
27 seeking a foster care placement, guardianship, or adoption under
28 this code.

29 180. (a) In an Indian child custody proceeding notice shall
30 comply with subdivision (b) of this section.

31 (b) Any notice sent under this section shall be sent to the
32 minor's parent or legal guardian, Indian custodian, if any, and the
33 Indian child's tribe and shall comply with all of the following
34 requirements:

35 (1) Notice shall be sent by registered or certified mail with
36 return receipt ~~requested, and additional requested. Additional~~
37 ~~notice by first-class mail is recommended recommended, but not~~
38 ~~required.~~

39 (2) Notice to the tribe shall be to the tribal chairperson, unless
40 the tribe has designated another agent for service.

1 (3) Notice shall be sent to all tribes of which the child may be
2 a member or eligible for membership until the court makes a
3 determination as to which tribe is the Indian child's tribe in
4 accordance with subdivision (d) of Section 170, after which
5 notice need only be sent to the tribe determined to be the Indian
6 child's tribe.

7 (4) ~~Notice~~ *Notice, to the extent required by federal law*, shall
8 be sent to the Secretary of the Interior's designated agent, the
9 Sacramento Area Director, Bureau of Indian Affairs. If the
10 identity or location of the Indian child's tribe is known, a copy of
11 the notice shall also be sent directly to the Secretary of the
12 Interior unless the Secretary of the Interior has waived that notice
13 in writing and the person responsible for giving notice under this
14 section has filed proof of the waiver with the court.

15 (5) In addition to the information specified in other sections of
16 this article, notice shall include all of the following information:

17 (A) The name, birthdate, and birthplace of the Indian ~~child~~
18 *child, if known*.

19 (B) The name of any Indian tribe in which the child is a
20 member or may be eligible for ~~membership~~ *membership, if*
21 *known*.

22 (C) All names known of the Indian child's biological parents,
23 grandparents, and great-grandparents, or Indian custodians,
24 including maiden, married, and former names or aliases, as well
25 as their current and former addresses, birthdates, places of birth
26 and death, tribal enrollment numbers, and any other identifying
27 ~~information~~ *information, if known*.

28 (D) A copy of the petition by which the proceeding was
29 initiated.

30 (E) A copy of the child's birth certificate, if available.

31 (F) The location, mailing address, and telephone number of
32 the court and all parties notified pursuant to this section.

33 (G) A statement of the following:

34 (i) The absolute right of the child's parents, Indian custodians,
35 and tribe to intervene in the proceeding.

36 (ii) The right of the child's parents, Indian custodians, and
37 tribe to petition the court to transfer the proceeding to the tribal
38 court of the Indian child's tribe, absent objection by either parent
39 and subject to declination by the tribal court.

(iii) The right of the child's parents, Indian custodians, and tribe to, upon request, be granted up to an additional 20 days from the receipt of the notice to prepare for the proceeding.

(iv) The potential legal consequences of the proceedings on the future custodial rights of the child's parents or Indian custodians.

(v) That if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent the parents or Indian custodians *pursuant to Section 1912 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.)*.

(vi) That the information contained in the notice, petition, pleading, and other court documents is confidential, so ~~tribal officials~~ *any person or entity notified* shall maintain the confidentiality of the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(c) Notice shall be sent whenever it is known or there is reason to know that an Indian child is involved, and for every hearing thereafter, including, but not limited to, the hearing at which a final adoption order is to be granted. *After a tribe acknowledges that the child is a member or eligible for membership in that tribe, or after the Indian child's tribe intervenes in a proceeding,* the information set out in subparagraphs (C), (D), (E), and (G) of paragraph (5) of subdivision (b) need not be included with the notice.

(d) Proof of the notice, including copies of notices sent and all return receipts and responses received, shall be filed with the court in advance of the hearing except as permitted under subdivision (e).

(e) No proceeding shall be held until at least 10 days after receipt of notice by the parent, Indian custodian, the tribe, or the Bureau of Indian Affairs. The parent, Indian custodian, or the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding. Nothing herein shall be construed as limiting the rights of the parent, Indian custodian, or tribe to 10 days' notice if a lengthier notice period is required under this code.

(f) With respect to giving notice to Indian tribes, a party shall be subject to court sanctions if that person knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child, or counsels a party to do so.

~~185. (a) If a custody proceeding involves a child who has Indian ancestry but who is not an Indian child, the court may recognize the tribe from which the child is descended and grant standing to participate as a party in the proceeding upon request of the tribe.~~

~~(b) If the court recognizes the child's tribe and grants standing to the tribe to participate as a party to the proceeding, the tribe may do all of the following:~~

~~(1) Be present at the hearing.~~

~~(2) Be represented by retained counsel or a representative of the tribe designated by the tribe to intervene on behalf of the tribe, provided that when the tribe appears as a party by a representative of the tribe, the name of the representative and a statement of authorization for that individual to appear on behalf of the tribe shall be submitted to the court in the form of a tribal resolution or other document evidencing an official act of the tribe.~~

~~(3) Address the court.~~

~~(4) Receive notice of hearings.~~

~~(5) Examine all court documents relating to the proceeding.~~

~~(6) Present evidence.~~

~~(7) Submit written reports and recommendations to the court.~~

~~(8) Perform other duties and responsibilities as requested or approved by the court.~~

~~(e) If more than one tribe requests intervention under subdivision (a), the court may limit intervention to the tribe with which the child has the most significant contacts, as determined in accordance with paragraph (2) of subdivision (d) of Section 170.~~

~~(d) This section is intended to assist the court in making decisions that are in the best interest of the child involved by permitting a tribe in the circumstances set out in subdivision (a) to inform the court and parties to the proceeding about placement options for the child within the child's extended family or the tribal community, services and programs available to the child and the child's parents as Indians, and other unique interests the~~

1 child or the child's parents may have as Indians. This section
2 shall not be construed to make the Indian Child Welfare Act (25
3 U.S.C. Sec. 1901 et seq.), or any state law implementing the
4 Indian Child Welfare Act, applicable to the proceedings, or to
5 limit the court's discretion to permit other interested persons to
6 participate in these or any other proceedings.

7 SEC. 2. Section 3040 of the Family Code is amended to read:

8 3040. (a) Custody should be granted in the following order
9 of preference according to the best interest of the child as
10 provided in Sections 3011 and 3020:

11 (1) To both parents jointly pursuant to Chapter 4 (commencing
12 with Section 3080) or to either parent. In making an order
13 granting custody to either parent, the court shall consider, among
14 other factors, which parent is more likely to allow the child
15 frequent and continuing contact with the noncustodial parent,
16 consistent with Sections 3011 and 3020, and shall not prefer a
17 parent as custodian because of that parent's sex. The court, in its
18 discretion, may require the parents to submit to the court a plan
19 for the implementation of the custody order.

20 (2) If to neither parent, to the person or persons in whose
21 home the child has been living in a wholesome and stable
22 environment.

23 (3) To any other person or persons deemed by the court to be
24 suitable and able to provide adequate and proper care and
25 guidance for the child.

26 (b) This section establishes neither a preference nor a
27 presumption for or against joint legal custody, joint physical
28 custody, or sole custody, but allows the court and the family the
29 widest discretion to choose a parenting plan that is in the best
30 interest of the child.

31 (c) Notwithstanding subdivisions (a) and (b), if the child is an
32 Indian child, before making an order granting custody to a person
33 or persons other than a parent, over the objection of a parent, the
34 court shall apply the placement preferences and standards set out
35 in Section 361.31 of the Welfare and Institutions Code.

36 SEC. 3.

37 SEC. 2. Section 3041 of the Family Code is amended to read:

38 3041. (a) Before making an order granting custody to a
39 person or persons other than a parent, over the objection of a
40 parent, the court shall make a finding that granting custody to a

parent would be detrimental to the child and that granting custody to the nonparent is required to serve the best interest of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

(b) Subject to subdivision (d), a finding that parental custody would be detrimental to the child shall be supported by clear and convincing evidence.

(c) As used in this section, “detriment to the child” includes the harm of removal from a stable placement of a child with a person who has assumed, on a day-to-day basis, the role of his or her parent, fulfilling both the child’s physical needs and the child’s psychological needs for care and affection, and who has assumed that role for a substantial period of time. A finding of detriment does not require any finding of unfitness of the parents.

(d) Notwithstanding subdivision (b), if the court finds by a preponderance of the evidence that the person to whom custody may be given is a person described in subdivision (c), this finding shall constitute a finding that the custody is in the best interest of the child and that parental custody would be detrimental to the child absent a showing by a preponderance of the evidence to the contrary.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, if the child is an Indian child, when an allegation is made that parental custody would be detrimental to the child, before ~~considering the allegation and making an order granting custody to a person or persons other than a parent, over the objection of a parent, the court shall apply the evidentiary standards described in subdivisions (d), (e), and (f)~~ *court shall apply the evidentiary standards described in subdivisions (d), (e), and (f) of Section 1912 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and Sections 224.6 and 361.7 of the Welfare and Institutions Code and the placement preferences and standards set out in Section 361.31 of the Welfare and Institutions Code.*

(2) *Upon a finding that an order granting custody to a person other than a parent is necessary to prevent imminent physical damage or harm to the child, the court may issue a temporary custody order without adhering to the requirements of paragraph (1), so long as the court sets a return date to court of not more*

1 *than 90 days for the issuance of an order in compliance with*
2 *paragraph (1).*

3 ~~SEC. 4.~~

4 ~~SEC. 3.~~ Section 7810 of the Family Code is repealed.

5 ~~SEC. 5.~~

6 ~~SEC. 4.~~ Section 7821 of the Family Code is amended to read:

7 7821. A finding pursuant to this chapter shall be supported by
8 clear and convincing evidence, except as otherwise provided.

9 ~~SEC. 6.~~

10 ~~SEC. 5.~~ Section 7822 of the Family Code is amended to read:

11 7822. (a) A proceeding under this part may be brought where
12 the child has been left without provision for the child's
13 identification by the child's parent or parents or by others or has
14 been left by both parents or the sole parent in the care and
15 custody of another for a period of six months or by one parent in
16 the care and custody of the other parent for a period of one year
17 without any provision for the child's support, or without
18 communication from the parent or parents, with the intent on the
19 part of the parent or parents to abandon the child.

20 (b) The failure to provide identification, failure to provide
21 support, or failure to communicate is presumptive evidence of
22 the intent to abandon. If the parent or parents have made only
23 token efforts to support or communicate with the child, the court
24 may declare the child abandoned by the parent or parents.

25 (c) If the child has been left without provision for the child's
26 identification and the whereabouts of the parents are unknown, a
27 petition may be filed after the 120th day following the discovery
28 of the child and citation by publication may be commenced. The
29 petition may not be heard until after the 180th day following the
30 discovery of the child.

31 (d) If the parent has placed the child for adoption and has not
32 refused to give the required consent to adoption, evidence of the
33 adoptive placement shall not in itself preclude the court from
34 finding an intent on the part of that parent to abandon the child. If
35 the parent has placed the child for adoption and has refused to
36 give the required consent to adoption but has not taken
37 reasonable action to obtain custody of the child, evidence of the
38 adoptive placement shall not in itself preclude the court from
39 finding an intent on the part of that parent to abandon the child.

(e) Notwithstanding subdivisions (a), (b), (c), and (d), if the parent of an Indian child has transferred physical care, custody and control of the child to an Indian custodian, that action shall not be deemed to constitute an abandonment of the child, unless the parent manifests the intent to abandon the child by either of the following:

(1) Failing to resume physical care, custody, and control of the child upon the request of the Indian custodian *provided that if the Indian custodian is unable to make a request because the parent has failed to keep the Indian custodian apprised of his or her whereabouts and the Indian custodian has made reasonable efforts to determine the whereabouts of the parent without success, there may be evidence of intent to abandon.*

(2) Failing to substantially comply with any obligations assumed by the parent in his or her agreement with the Indian custodian despite the Indian custodian's objection to the noncompliance.

~~SEC. 7.~~

SEC. 6. Section 7892.5 is added to the Family Code, to read:

7892.5. The court shall not declare an Indian child free from the custody or control of a parent, unless both of the following apply:

(a) The court finds, supported by clear and convincing evidence, that active efforts were made in accordance with Section 361.7 of the Welfare and Institutions Code.

(b) The court finds, supported by evidence beyond a reasonable doubt, including testimony of one or more "qualified expert witnesses" as described in Section 224.5 of the Welfare and Institutions Code, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

~~SEC. 8.~~

SEC. 7. Section 7907.3 is added to the Family Code, to read:

7907.3. The Interstate Compact on the Placement of Children shall not apply to any placement, sending, or bringing of an Indian child into another state pursuant to a transfer of jurisdiction to a tribal court under Section 1911 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

~~SEC. 9.~~

SEC. 8. Section 8606.5 is added to the Family Code, to read:

1 8606.5. (a) Notwithstanding any other section in this part,
2 and in accordance with Section 1913 of the Indian Child Welfare
3 Act (25 U.S.C. Sec. 1901 et seq.), consent to adoption given by
4 an Indian child's parent is not valid unless both of the following
5 occur:

6 (1) The consent is executed in writing at least 10 days after the
7 child's birth and recorded before a judge.

8 (2) The judge certifies that the terms and consequences of the
9 consent were fully explained in detail in English and were fully
10 understood by the parent or that they were interpreted into a
11 language that the parent understood.

12 (b) The parent of an Indian child may withdraw his or her
13 consent to adoption for any reason at any time prior to the entry
14 of a final decree of adoption and the child shall be returned to the
15 parent.

16 (c) After the entry of a final decree of adoption of an Indian
17 child, the Indian child's parent may withdraw consent to the
18 adoption upon the grounds that consent was obtained through
19 fraud or duress and may petition the court to vacate such decree.
20 Upon a finding that such consent was obtained through fraud or
21 duress, the court shall vacate such decree and return the child to
22 the parent, provided that no adoption that has been effective for
23 at least 2 years may be invalidated unless otherwise permitted
24 under state law.

25 ~~SEC. 10. Section 8616.5 of the Family Code is amended to~~
26 ~~read:~~

27 ~~8616.5. (a) The Legislature finds and declares that some~~
28 ~~adoptive children may benefit from either direct or indirect~~
29 ~~contact with birth relatives, including the birth parent or parents~~
30 ~~or an Indian tribe, after being adopted. Postadoption contact~~
31 ~~agreements are intended to ensure children of an achievable level~~
32 ~~of continuing contact when contact is beneficial to the children~~
33 ~~and the agreements are voluntarily entered into by birth relatives,~~
34 ~~including the birth parent or parents, an Indian tribe, and~~
35 ~~adoptive parents.~~

36 ~~(b) (1) Nothing in the adoption laws of this state shall be~~
37 ~~construed to prevent the adopting parent or parents, the birth~~
38 ~~relatives, including the birth parent or parents, an Indian tribe,~~
39 ~~and the child from voluntarily entering into a written agreement~~
40 ~~to permit continuing contact between the birth relatives,~~

1 including the birth parent or parents, the Indian tribe, and the
2 child if the agreement is found by the court to have been entered
3 into voluntarily and to be in the best interests of the child at the
4 time the adoption petition is granted.

5 (2) Except as provided in paragraph (3), the terms of any
6 postadoption contact agreement executed under this section shall
7 be limited to, but need not include, all of the following:

8 (A) Provisions for visitation between the child and a birth
9 parent or parents and other birth relatives, including siblings, and
10 the child's Indian tribe if the case is governed by the Indian Child
11 Welfare Act (25 U.S.C. Sec. 1901 et seq.).

12 (B) Provisions for future contact between a birth parent or
13 parents or other birth relatives, including siblings, or both, and
14 the child or an adoptive parent, or both, and in cases governed by
15 the Indian Child Welfare Act, the child's Indian tribe.

16 (C) Provisions for the sharing of information about the child in
17 the future.

18 (3) The terms of any postadoption contact agreement shall be
19 limited to the sharing of information about the child, unless the
20 child has an existing relationship with the birth relative.

21 (e) At the time an adoption decree is entered pursuant to a
22 petition filed pursuant to Section 8714, 8714.5, 8802, 8912, or
23 9000, the court entering the decree may grant postadoption
24 privileges if an agreement for those privileges has been entered
25 into, including agreements entered into pursuant to subdivision
26 (f) of Section 8620. The hearing to grant the adoption petition
27 and issue an order of adoption may be continued as necessary to
28 permit parties who are in the process of negotiating a
29 postadoption agreement to reach a final agreement.

30 (d) The child who is the subject of the adoption petition shall
31 be considered a party to the postadoption contact agreement. The
32 written consent to the terms and conditions of the postadoption
33 contact agreement and any subsequent modifications of the
34 agreement by a child who is 12 years of age or older is a
35 necessary condition to the granting of privileges regarding
36 visitation, contact, or sharing of information about the child,
37 unless the court finds by a preponderance of the evidence that the
38 agreement, as written, is in the best interests of the child. Any
39 child who has been found to come within Section 300 of the
40 Welfare and Institutions Code or who is the subject of a petition

1 for jurisdiction of the juvenile court under Section 300 of the
2 Welfare and Institutions Code shall be represented by an attorney
3 for purposes of consent to the postadoption contact agreement.

4 (e) A postadoption contact agreement shall contain the
5 following warnings in bold type:

6 (1) After the adoption petition has been granted by the court,
7 the adoption cannot be set aside due to the failure of an adopting
8 parent, a birth parent, a birth relative, an Indian tribe, or the child
9 to follow the terms of this agreement or a later change to this
10 agreement.

11 (2) A disagreement between the parties or litigation brought to
12 enforce or modify the agreement shall not affect the validity of
13 the adoption and shall not serve as a basis for orders affecting the
14 custody of the child.

15 (3) A court will not act on a petition to change or enforce this
16 agreement unless the petitioner has participated, or attempted to
17 participate, in good faith in mediation or other appropriate
18 dispute resolution proceedings to resolve the dispute.

19 (f) Upon the granting of the adoption petition and the issuing
20 of the order of adoption of a child who is a dependent of the
21 juvenile court, juvenile court dependency jurisdiction shall be
22 terminated. Enforcement of the postadoption contact agreement
23 shall be under the continuing jurisdiction of the court granting
24 the petition of adoption. The court may not order compliance
25 with the agreement absent a finding that the party seeking the
26 enforcement participated, or attempted to participate, in good
27 faith in mediation or other appropriate dispute resolution
28 proceedings regarding the conflict, prior to the filing of the
29 enforcement action, and that the enforcement is in the best
30 interests of the child. Documentary evidence or offers of proof
31 may serve as the basis for the court's decision regarding
32 enforcement. No testimony or evidentiary hearing shall be
33 required. The court shall not order further investigation or
34 evaluation by any public or private agency or individual absent a
35 finding by clear and convincing evidence that the best interests of
36 the child may be protected or advanced only by that inquiry and
37 that the inquiry will not disturb the stability of the child's home
38 to the detriment of the child.

~~(g) The court may not award monetary damages as a result of the filing of the civil action pursuant to subdivision (c) of this section.~~

~~(h) A postadoption contact agreement may be modified or terminated only if either of the following occurs:~~

~~(1) All parties, including the child if the child is 12 years of age or older at the time of the requested termination or modification, have signed a modified postadoption contact agreement and the agreement is filed with the court that granted the petition of adoption.~~

~~(2) The court finds all of the following:~~

~~(A) The termination or modification is necessary to serve the best interests of the child.~~

~~(B) There has been a substantial change of circumstances since the original agreement was executed and approved by the court.~~

~~(C) The party seeking the termination or modification has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings prior to seeking court approval of the proposed termination or modification.~~

~~Documentary evidence or offers of proof may serve as the basis for the court's decision. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by that inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.~~

~~(i) All costs and fees of mediation or other appropriate dispute resolution proceedings shall be borne by each party, excluding the child. All costs and fees of litigation shall be borne by the party filing the action to modify or enforce the agreement when no party has been found by the court as failing to comply with an existing postadoption contact agreement. Otherwise, a party, other than the child, found by the court as failing to comply without good cause with an existing agreement shall bear all the costs and fees of litigation.~~

1 ~~(j) The Judicial Council shall adopt rules of court and forms~~
2 ~~for motions to enforce, terminate, or modify postadoption contact~~
3 ~~agreements.~~

4 ~~(k) The court may not set aside a decree of adoption, rescind a~~
5 ~~relinquishment, or modify an order to terminate parental rights or~~
6 ~~any other prior court order because of the failure of a birth~~
7 ~~parent, adoptive parent, birth relative, an Indian tribe, or the child~~
8 ~~to comply with any or all of the original terms of, or subsequent~~
9 ~~modifications to, the postadoption contact agreement, except as~~
10 ~~follows:~~

11 ~~(1) The court may modify a prior court order upon petition of~~
12 ~~the birth parent, birth relative, or Indian tribe prior to issuing the~~
13 ~~order of adoption under the following circumstances:~~

14 ~~(A) When the prospective adoptive parent expressed a~~
15 ~~willingness to enter into a postadoption contact agreement prior~~
16 ~~to or during the proceedings to terminate parental rights or free~~
17 ~~the child from parental custody and control or prior to a birth~~
18 ~~parent giving consent to the adoption.~~

19 ~~(B) Parental rights are terminated or a petition for freedom~~
20 ~~from parental custody and control is granted at least in part~~
21 ~~because of that willingness.~~

22 ~~(C) The prospective adoptive parent fails to negotiate in good~~
23 ~~faith to enter into a postadoption contact agreement, provided~~
24 ~~that the failure of the parties to reach an agreement is not in and~~
25 ~~of itself proof of bad faith.~~

26 ~~(2) In the circumstances set out in paragraph (1) the court may~~
27 ~~modify prior orders or issue new orders as necessary to ensure~~
28 ~~the best interest of the child is met, including, but not limited to,~~
29 ~~requiring the parties to engage in family mediation services for~~
30 ~~the purpose of reaching a postadoption contact agreement,~~
31 ~~initiating guardianship proceedings in lieu of an adoption, or~~
32 ~~authorizing a change of adoptive placement for the child.~~

33 ~~SEC. 11.~~

34 ~~SEC. 9.~~ Section 8619.5 is added to the Family Code, to read:

35 8619.5. Whenever a final decree of adoption of an Indian
36 child has been vacated or set aside or the adoptive parent
37 voluntarily consents to termination of his or her parental rights to
38 the child, a biological parent or prior Indian custodian may
39 petition for return of custody and the court shall grant that
40 petition unless there is a showing, in a proceeding subject to the

provisions of Section 1912 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), that the return of custody is not in the best interest of the child.

~~SEC. 12.~~

SEC. 10. Section 8620 of the Family Code is amended to read:

8620. (a) (1) If a parent is seeking to relinquish a child pursuant to Section 8700 or execute an adoption placement agreement pursuant to Section 8801.3, the department, licensed adoption agency, or adoption service provider, as applicable, shall ask the child and the child's parent or custodian whether the child is, or may be, a member of, or eligible for membership in an Indian tribe or whether the child has been identified as a member of an Indian organization. The department, licensed adoption agency, or adoption service provider, as applicable, shall complete the forms provided for this purpose by the department and shall make this completed form a part of the file.

(2) If there is any oral or written information that indicates that the child is, or may be, an Indian child, the department, licensed adoption agency, or adoption service provider, as applicable, shall obtain the following information:

(A) The name of the child involved, and the actual date and place of birth of the child.

(B) The name, address, date of birth, and tribal affiliation of the birth parents, maternal and paternal grandparents, and maternal and paternal great-grandparents of the child.

(C) The name and address of extended family members of the child who have a tribal affiliation.

(D) The name and address of the Indian tribes or Indian organizations of which the child is, or may be, a member.

(E) A statement of the reasons why the child is, or may be, an Indian.

(3) (A) The department, licensed adoption agency, or adoption service provider, as applicable, shall send a notice, which shall include information obtained pursuant to paragraph (2) and a request for confirmation of the child's Indian status, to any parent and any custodian of the child, and to any Indian tribe of which the child is, or may be, a member or eligible for membership. If any of the information required under paragraph (2) cannot be obtained, the notice shall indicate that fact.

1 (B) The notice sent pursuant to subparagraph (A) shall
2 describe the nature of the proceeding and advise the recipient of
3 the Indian tribe's right to intervene in the proceeding on its own
4 behalf or on behalf of a tribal member relative of the child.

5 (b) The department shall adopt regulations to ensure that if a
6 child who is being voluntarily relinquished for adoption, pursuant
7 to Section 8700, is an Indian child, the parent of the child shall be
8 advised of his or her right to withdraw his or her consent and
9 thereby rescind the relinquishment of an Indian child for any
10 reason at any time prior to entry of a final decree of termination
11 of parental rights or adoption, pursuant to Section 1913 of Title
12 25 of the United States Code.

13 (c) If a child who is the subject of an adoption proceeding after
14 being relinquished for adoption pursuant to Section 8700, is an
15 Indian child, the child's Indian tribe may intervene in that
16 proceeding on behalf of a tribal member relative of the child.

17 (d) Any notice sent under this section shall comply with
18 Section 180.

19 (e) If all prior notices required by this section have been
20 provided to an Indian tribe, the Indian tribe receiving those prior
21 notices is encouraged to provide notice to the department and to
22 the licensed adoption agency or adoption service provider, not
23 later than five calendar days prior to the date of the hearing to
24 determine whether or not the final adoption order is to be
25 granted, indicating whether or not it intends to intervene in the
26 proceeding required by this section, either on its own behalf or
27 on behalf of a tribal member who is a relative of the child.

28 (f) The Legislature finds and declares that some adoptive
29 children may benefit from either direct or indirect contact with an
30 Indian tribe. Nothing in the adoption laws of this state shall be
31 construed to prevent the adopting parent or parents, the birth
32 relatives, including the birth parent or parents, an Indian tribe,
33 and the child, from voluntarily entering into a written agreement
34 to permit continuing contact between the Indian tribe and the
35 child, if the agreement is found by the court to have been entered
36 into voluntarily and to be in the best interest of the child at the
37 time the adoption petition is granted.

38 (g) With respect to giving notice to Indian tribes in the case of
39 voluntary placements of Indian children pursuant to this section,

1 a person, other than a birth parent of the child, shall be subject to
2 a civil penalty if that person knowingly and willfully:

3 (1) Falsifies, conceals, or covers up by any trick, scheme, or
4 device, a material fact concerning whether the child is an Indian
5 child or the parent is an Indian.

6 (2) Makes any false, fictitious, or fraudulent statement,
7 omission, or representation.

8 (3) Falsifies a written document knowing that the document
9 contains a false, fictitious, or fraudulent statement or entry
10 relating to a material fact.

11 (4) Assists any person in physically removing a child from the
12 State of California in order to obstruct the application of
13 notification.

14 (h) Civil penalties for a violation of subdivision (g) by a
15 person other than a birth parent of the child are as follows:

16 (1) For the initial violation, a person shall be fined not more
17 than ten thousand dollars (\$10,000).

18 (2) For any subsequent violation, a person shall be fined not
19 more than twenty thousand dollars (\$20,000).

20 ~~SEC. 13.~~

21 *SEC. 11.* Section 8710 of the Family Code is amended to
22 read:

23 8710. (a) If a child is being considered for adoption, the
24 department or licensed adoption agency shall first consider
25 adoptive placement in the home of a relative or, in the case of an
26 Indian child, according to the placement preferences and
27 standards set out in subdivisions (c), (d), (e), (f), (g), (h), and (i)
28 of Section 361.31 of the Welfare and Institutions Code.
29 However, if a relative is not available, if placement with an
30 available relative is not in the child's best interest, or if
31 placement would permanently separate the child from other
32 siblings who are being considered for adoption or who are in
33 foster care and an alternative placement would not require the
34 permanent separation, the foster parent or parents of the child
35 shall be considered with respect to the child along with all other
36 prospective adoptive parents where all of the following
37 conditions are present:

38 (1) The child has been in foster care with the foster parent or
39 parents for a period of more than four months.

1 (2) The child has substantial emotional ties to the foster parent
2 or parents.

3 (3) The child's removal from the foster home would be
4 seriously detrimental to the child's well-being.

5 (4) The foster parent or parents have made a written request to
6 be considered to adopt the child.

7 (b) In the case of an Indian child whose foster parent or
8 parents or other prospective adoptive parents do not fall within
9 the placement preferences established in subdivision (c) or (d) of
10 Section 361.31 of the Welfare and Institutions Code, the foster
11 parent or parents or other prospective adoptive parents shall only
12 be considered if the court finds, supported by clear and
13 convincing evidence, that good cause exists to deviate from these
14 placement preferences.

15 (c) This section does not apply to a child who has been
16 adjudged a dependent of the juvenile court pursuant to Section
17 300 of the Welfare and Institutions Code.

18 ~~SEC. 14.~~

19 *SEC. 12.* Section 9208 is added to the Family Code, to read:

20 9208. (a) The clerk of the superior court entering a final
21 order of adoption concerning an Indian child shall provide the
22 Secretary of the Interior or his or her designee with a copy of the
23 order within 30 days of the date of the order, together with any
24 information necessary to show the following:

25 (1) The name and tribal affiliation of the child.

26 (2) The names and addresses of the biological parents.

27 (3) The names and addresses of the adoptive parents.

28 (4) The identity of any agency having files or information
29 relating to that adoptive placement.

30 (b) If the court records contain an affidavit of the biological
31 parent or parents that their identity remain confidential, the court
32 shall include that affidavit with the other information.

33 ~~SEC. 15.~~

34 *SEC. 13.* Section 9209 is added to the Family Code, to read:

35 9209. (a) Upon application by an Indian individual who has
36 reached the age of 18 years and who was the subject of an
37 adoptive placement, the court which entered the final decree of
38 adoption shall inform that individual of the tribal affiliation, if
39 any, of the individual's biological parents and provide any other
40 information as may be necessary to protect any rights flowing

1 from the individual's tribal relationship, including, but not
2 limited to, tribal membership rights or eligibility for federal or
3 tribal programs or services available to Indians.

4 (b) If the court records contain an affidavit of the biological
5 parent or parents that their identity remain confidential, the court
6 shall inform the individual that the Secretary of the Interior may,
7 upon request, certify to the individual's tribe that the individual's
8 parentage and other circumstances of birth entitle the individual
9 to membership under the criteria established by the tribe.

10 ~~SEC. 16.~~

11 *SEC. 14.* Section 9210 of the Family Code is amended to
12 read:

13 9210. (a) Except as otherwise provided in subdivisions (b)
14 and (c), a court of this state has jurisdiction over a proceeding for
15 the adoption of a minor commenced under this part if any of the
16 following applies:

17 (1) Immediately before commencement of the proceeding, the
18 minor lived in this state with a parent, a guardian, a prospective
19 adoptive parent, or another person acting as parent, for at least
20 six consecutive months, excluding periods of temporary absence,
21 or, in the case of a minor under six months of age, lived in this
22 state with any of those individuals from soon after birth and there
23 is available in this state substantial evidence concerning the
24 minor's present or future care.

25 (2) Immediately before commencement of the proceeding, the
26 prospective adoptive parent lived in this state for at least six
27 consecutive months, excluding periods of temporary absence,
28 and there is available in this state substantial evidence concerning
29 the minor's present or future care.

30 (3) The agency that placed the minor for adoption is located in
31 this state and both of the following apply:

32 (A) The minor and the minor's parents, or the minor and the
33 prospective adoptive parent, have a significant connection with
34 this state.

35 (B) There is available in this state substantial evidence
36 concerning the minor's present or future care.

37 (4) The minor and the prospective adoptive parent are
38 physically present in this state and the minor has been abandoned
39 or it is necessary in an emergency to protect the minor because

1 the minor has been subjected to or threatened with mistreatment
2 or abuse or is otherwise neglected.

3 (5) It appears that no other state would have jurisdiction under
4 requirements substantially in accordance with paragraphs (1) to
5 (4), inclusive, or another state has declined to exercise
6 jurisdiction on the ground that this state is the more appropriate
7 forum to hear a petition for adoption of the minor, and there is
8 available in this state substantial evidence concerning the minor's
9 present or future care.

10 (b) A court of this state may not exercise jurisdiction over a
11 proceeding for adoption of a minor if at the time the petition for
12 adoption is filed a proceeding concerning the custody or adoption
13 of the minor is pending in a court of another state exercising
14 jurisdiction substantially in conformity with this part, unless the
15 proceeding is stayed by the court of the other state because this
16 state is a more appropriate forum or for another reason.

17 (c) If a court of another state has issued a decree or order
18 concerning the custody of a minor who may be the subject of a
19 proceeding for adoption in this state, a court of this state may not
20 exercise jurisdiction over a proceeding for adoption of the minor,
21 unless both of the following apply:

22 (1) The requirements for modifying an order of a court of
23 another state under this part are met, the court of another state
24 does not have jurisdiction over a proceeding for adoption
25 substantially in conformity with paragraphs (1) to (4), inclusive,
26 of subdivision (a), or the court of another state has declined to
27 assume jurisdiction over a proceeding for adoption.

28 (2) The court of this state has jurisdiction under this section
29 over the proceeding for adoption.

30 (d) For purposes of subdivisions (b) and (c), "a court of
31 another state" includes, in the case of an Indian child, a tribal
32 court having and exercising jurisdiction over a custody
33 proceeding involving the Indian child.

34 ~~SEC. 17.~~

35 *SEC. 15.* Section 1449 is added to the Probate Code, to read:

36 1449. (a) As used in this division, unless the context
37 otherwise requires, the terms "Indian," "Indian child," "Indian
38 child's tribe," "Indian custodian," "Indian tribe," "reservation,"
39 and "tribal court" shall be defined as provided in Section 1903 of
40 the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(b) When used in connection with an Indian child custody proceeding, the terms “extended family member” and “parent” shall be defined as provided in Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(c) “Indian child custody proceeding” means a “child custody proceeding” within the meaning of Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), including a voluntary or involuntary proceeding that may result in an Indian child’s temporary or long-term foster care or guardianship placement if the parent or Indian custodian cannot have the child returned upon demand, termination of parental rights or adoptive placement.

(d) When an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe, the court ~~may shall~~ make a determination, in writing together with the reasons for it, as to which tribe is the Indian child’s tribe *for purposes of the Indian child custody proceeding.* ~~If the court makes that finding, it shall do so~~ *The court shall make that determination* as follows:

(1) If the Indian child is or becomes a member of only one tribe, that tribe shall be designated as the Indian child’s tribe, even though the child is eligible for membership in another tribe.

(2) If an Indian child is or becomes a member of more than one tribe, or is not a member of any tribe but is eligible for membership in more than one tribe, the tribe with which the child has the more significant contacts shall be designated as the Indian child’s tribe. In determining which tribe the child has the more significant contacts with, the court shall consider, among other things, the following factors:

(A) The length of residence on or near the reservation of each tribe and frequency of contact with each tribe.

(B) The child’s participation in activities of each tribe.

(C) The child’s fluency in the language of each tribe.

(D) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes.

(E) The residence on or near one of the tribes’ reservations by the child parents, Indian custodian, or extended family members.

(F) Tribal membership of custodial parent or Indian custodian.

(G) Interest asserted by each tribe in response to the notice specified in Section 1460.2.

1 (H) The child's self-identification.

2 (3) If an Indian child becomes a member of a tribe other than
3 the one designated by the court as the Indian child's tribe under
4 paragraph (2), actions taken based on the court's determination
5 prior to the child's becoming a tribal member shall continue to be
6 valid.

7 ~~SEC. 18.~~

8 *SEC. 16.* Section 1456 is added to the Probate Code, to read:

9 1456. (a) The Legislature finds and declares the following:

10 (1) There is no resource that is more vital to the continued
11 existence and integrity of recognized Indian tribes than their
12 children, and the State of California has an interest in protecting
13 Indian children who are members of, or are eligible for
14 membership in, an Indian tribe. The state is committed to
15 protecting the essential tribal relations and best interest of an
16 Indian child by promoting practices, in accordance with the
17 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and other
18 applicable law, designed to prevent the child's involuntary
19 out-of-home placement and, whenever such placement is
20 necessary or ordered, by placing the child, whenever possible, in
21 a placement that reflects the unique values of the child's tribal
22 culture and is best able to assist the child in establishing,
23 developing, and maintaining a political, cultural, and social
24 relationship with the child's tribe and tribal community.

25 (2) It is in the interest of an Indian child that the child's
26 membership in the child's Indian tribe and connection to the
27 tribal community be encouraged and protected, regardless of
28 whether or not the child is in the physical custody of an Indian
29 parent or Indian custodian at the commencement of a child
30 custody proceeding, the parental rights of the child's parents
31 have been terminated, or *where* the child has resided or been
32 domiciled ~~on an Indian reservation~~.

33 (b) In all Indian child custody proceedings, as defined in the
34 federal Indian Child Welfare Act, the court shall consider all of
35 the findings contained in subdivision (a), strive to promote the
36 stability and security of Indian tribes and families, comply with
37 the federal Indian Child Welfare Act, and seek to protect the best
38 interest of the child. Whenever an Indian child is removed from a
39 foster care home or institution, guardianship, or adoptive
40 placement for the purpose of further foster care, guardianship, or

1 adoptive placement, placement of the child shall be in
2 accordance with the Indian Child Welfare Act.

3 (c) A determination by an Indian tribe that an unmarried
4 person, who is under the age of 18 years, is either (1) a member
5 of an Indian tribe or (2) eligible for membership in an Indian
6 tribe and a biological child of a member of an Indian tribe shall
7 constitute a significant political affiliation with the tribe and shall
8 require the application of the federal Indian Child Welfare Act to
9 the proceedings.

10 ~~(d) (1) If the Indian Child Welfare Act applies to a proceeding~~
11 ~~under this code, to the extent that this code or the Adoption and~~
12 ~~Safe Families Act of 1999 (P.L. 105-89) are inconsistent or in~~
13 ~~conflict with the Indian Child Welfare Act, the provisions of the~~
14 ~~Indian Child Welfare Act shall prevail.~~

15 ~~(2)~~

16 (d) In any case in which this code or other applicable state or
17 federal law provides a higher standard of protection to the rights
18 of the parent or Indian custodian of an Indian child, or the Indian
19 child's tribe, than the rights provided under the Indian Child
20 Welfare Act, the court shall apply the higher state or federal
21 standard.

22 (e) Any Indian child, the Indian child's tribe, or the parent or
23 Indian custodian from whose custody the child has been
24 removed, may petition ~~any court of competent jurisdiction~~ *the*
25 *court* to invalidate an action in an Indian child custody
26 proceeding for foster care or guardianship placement or
27 termination of parental rights if the action violated Sections
28 1911, 1912, and 1913 of the Indian Child Welfare Act.

29 ~~SEC. 19.~~

30 *SEC. 17.* Section 1457 is added to the Probate Code, to read:

31 1457. (a) The Indian Child Welfare Act (25 U.S.C. Sec.
32 1901 et seq.) shall apply to the following guardianship or
33 conservatorship proceedings under this division when the
34 proposed ward or conservatee is an Indian child:

35 (1) In any case in which the petition is a petition for
36 guardianship of the person and the proposed guardian is not the
37 natural parent or Indian custodian of the proposed ward, unless
38 the proposed guardian has been nominated by the natural parents
39 pursuant to Section 1500 and the parents retain the right to have
40 custody of the child returned to them upon demand.

1 (2) To a proceeding to have an Indian child declared free from
2 the custody and control of one or both parents brought in a
3 guardianship proceeding.

4 (3) In any case in which the petition is a petition for
5 conservatorship of the person of a minor whose marriage has
6 been dissolved, the proposed conservator is seeking physical
7 custody of the minor, the proposed conservator is not the natural
8 parent or Indian custodian of the proposed conservatee and the
9 natural parent or Indian custodian does not retain the right to
10 have custody of the child returned to them upon demand.

11 (b) When the Indian Child Welfare Act applies to a proceeding
12 under this division, the court shall apply Sections 224.3 to 224.6,
13 inclusive, and Sections 305.5, 361.31, and 361.7 of the Welfare
14 and Institutions Code, and the following rules from the California
15 Rules of Court, as they read on January 1, 2005:

16 (1) Paragraph (7) of subdivision (b) of Rule 1410.

17 (2) Subdivision (i) of Rule 1412.

18 (c) In the provisions cited in subdivision (b), references to
19 social workers, probation officers, county welfare department, or
20 probation department shall be construed as meaning the party
21 seeking a foster care placement, guardianship, or adoption.

22 SEC. 20. ~~Section 1458 is added to the Probate Code, to read:~~

23 ~~1458. (a) If a custody proceeding under this division involves~~
24 ~~a child who has Indian ancestry but who is not an Indian child,~~
25 ~~the court may recognize the tribe from which the child is~~
26 ~~descended and grant standing to participate as a party in the~~
27 ~~proceeding upon the request of the tribe.~~

28 ~~(b) If the court recognizes the child's tribe and grants standing~~
29 ~~to the tribe to participate as a party to the proceeding, the tribe~~
30 ~~may do all of the following:~~

31 ~~(1) Be present at the hearing.~~

32 ~~(2) Be represented by retained counsel or a representative of~~
33 ~~the tribe designated by the tribe to intervene on behalf of the~~
34 ~~tribe, provided that when the tribe appears as a party by a~~
35 ~~representative of the tribe, the name of the representative and a~~
36 ~~statement of authorization for that individual to appear on behalf~~
37 ~~of the tribe shall be submitted to the court in the form of a tribal~~
38 ~~resolution or other document evidencing an official act of the~~
39 ~~tribe.~~

40 ~~(3) Address the court.~~

~~(4) Receive notice of hearings.~~

~~(5) Examine all court documents relating to the proceeding.~~

~~(6) Present evidence.~~

~~(7) Submit written reports and recommendations to the court.~~

~~(8) Perform other duties and responsibilities as requested or approved by the court.~~

~~(e) If more than one tribe requests intervention under subdivision (a), the court may limit intervention to the tribe with which the child has the most significant contacts, as determined in accordance with paragraph (2) of subdivision (d) of Section 1470 of the Family Code.~~

~~(d) This section is intended to assist the court in making decisions that are in the best interest of the child involved by permitting a tribe in the circumstances described in subdivision (a) to inform the court and parties to the proceeding about placement options for the child within the child's extended family or the tribal community, services and programs available to the child and the child's parents as Indians, and other unique interests the child or the child's parents may have as Indians. This section shall not be construed to make the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), or any state law implementing the Indian Child Welfare Act, applicable to the proceedings, or to limit the court's discretion to permit other interested persons to participate in these or any other proceedings.~~

~~SEC. 21.~~

~~SEC. 18.~~ Section 1460.2 is added to the Probate Code, to read:

1460.2. (a) If the court or petitioner knows or has reason to know that the proposed ward or conservatee may be an Indian child, notice shall comply with subdivision (b) in any case in which the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) applies, as specified in Section 1457.

(b) Any notice sent under this section shall be sent to the minor's parent or legal guardian, Indian custodian, if any, and the Indian child's tribe, and shall comply with all of the following requirements:

(1) Notice shall be sent by registered or certified mail with return receipt requested, ~~and additional requested.~~ *Additional*

1 notice by first-class mail is ~~recommended~~ *recommended, but not*
2 *required*.

3 (2) Notice to the tribe shall be to the tribal chairperson, unless
4 the tribe has designated another agent for service.

5 (3) Notice shall be sent to all tribes of which the child may be
6 a member or eligible for membership until the court makes a
7 determination as to which tribe is the Indian child's tribe in
8 accordance with subdivision (d) of Section 1449, after which
9 notice need only be sent to the tribe determined to be the Indian
10 child's tribe.

11 (4) ~~Notice~~ *Notice, to the extent required by federal law*, shall
12 be sent to the Secretary of the Interior's designated agent, the
13 Sacramento Area Director, Bureau of Indian Affairs. If the
14 identity or location of the Indian child's tribe is known, a copy of
15 the notice shall also be sent directly to the Secretary of the
16 Interior, unless the Secretary of the Interior has waived the notice
17 in writing and the person responsible for giving notice under this
18 section has filed proof of the waiver with the court.

19 (5) The notice shall include all of the following information:

20 (A) The name, birthdate, and birthplace of the Indian ~~child~~
21 *child, if known*.

22 (B) The name of any Indian tribe in which the child is a
23 member or may be eligible for ~~membership~~ *membership, if*
24 *known*.

25 (C) All names known of the Indian child's biological parents,
26 grandparents and great-grandparents or Indian custodians,
27 including maiden, married, and former names or aliases, as well
28 as their current and former addresses, birthdates, places of birth
29 and death, tribal enrollment numbers, and any other identifying
30 ~~information~~ *information, if known*.

31 (D) A copy of the petition.

32 (E) A copy of the child's birth certificate, if available.

33 (F) The location, mailing address, and telephone number of
34 the court and all parties notified pursuant to this section.

35 (G) A statement of the following:

36 (i) The absolute right of the child's parents, Indian custodians,
37 and tribe to intervene in the proceeding.

38 (ii) The right of the child's parents, Indian custodians, and
39 tribe to petition the court to transfer the proceeding to the tribal

1 court of the Indian child's tribe, absent objection by either parent
2 and subject to declination by the tribal court.

3 (iii) The right of the child's parents, Indian custodians, and
4 tribe to, upon request, be granted up to an additional 20 days
5 from the receipt of the notice to prepare for the proceeding.

6 (iv) The potential legal consequences of the proceedings on
7 the future custodial rights of the child's parents or Indian
8 custodians.

9 (v) That if the parents or Indian custodians are unable to
10 afford counsel, counsel shall be appointed to represent the
11 parents or Indian custodians *pursuant to Section 1912 of the*
12 *Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).*

13 (vi) That the information contained in the notice, petition,
14 pleading, and other court documents is confidential, so ~~tribal~~
15 ~~officials~~ *any person or entity notified* shall maintain the
16 confidentiality of the information contained in the notice
17 concerning the particular proceeding and not reveal it to anyone
18 who does not need the information in order to exercise the tribe's
19 rights under the Indian Child Welfare Act (25 U.S.C. Sec. 1901
20 et seq.).

21 (c) Notice shall be sent whenever it is known or there is reason
22 to know that an Indian child is involved, and for every hearing
23 thereafter, including, but not limited to, the hearing at which a
24 final adoption order is to be granted. *After a tribe acknowledges*
25 *that the child is a member or eligible for membership in the tribe,*
26 *or after* the Indian child's tribe intervenes in a proceeding, the
27 information set out in subparagraphs (C), (D), (E), and (G) of
28 paragraph (5) of subdivision (b) need not be included with the
29 notice.

30 (d) Proof of the notice, including copies of notices sent and all
31 return receipts and responses received, shall be filed with the
32 court in advance of the hearing except as permitted under
33 subdivision (e).

34 (e) No proceeding shall be held until at least 10 days after
35 receipt of notice by the parent, Indian custodian, the tribe or the
36 Bureau of Indian Affairs. The parent, Indian custodian, or the
37 tribe shall, upon request, be granted up to 20 additional days to
38 prepare for the proceeding. Nothing herein shall be construed as
39 limiting the rights of the parent, Indian custodian, or tribe to 10
40 days' notice when a lengthier notice period is required *by statute*.

1 (f) With respect to giving notice to Indian tribes, a party shall
2 be subject to court sanctions if that person knowingly and
3 willfully falsifies or conceals a material fact concerning whether
4 the child is an Indian child, or counsels a party to do so.

5 ~~SEC. 22.~~

6 *SEC. 19.* Section 1474 is added to the Probate Code, to read:

7 1474. ~~(a) If an Indian custodian or biological parent of an~~
8 ~~Indian child lacks the financial ability to retain counsel and~~
9 ~~requests the appointment of counsel, the court shall, at or before~~
10 ~~the time of the hearing, appoint the public defender or private~~
11 ~~counsel to represent the interest of the person in proceedings~~
12 ~~counsel in proceedings described in Section 1457 1457, the~~
13 ~~provisions of subsection (b) of Section 1912 of the Indian Child~~
14 ~~Welfare Act (25 U.S.C. Sec. 1901 et seq.) and Section 23.13 of~~
15 ~~Title 25 of the Code of Federal Regulations are applicable.~~

16 ~~(b) If the court appoints counsel under subdivision (a), the~~
17 ~~county shall pay the sum to that counsel.~~

18 ~~SEC. 23.~~

19 *SEC. 20.* Section 1500.1 is added to the Probate Code, to
20 read:

21 1500.1. (a) Notwithstanding any other section in this part,
22 and in accordance with Section 1913 of the Indian Child Welfare
23 Act (25 U.S.C. Sec. 1901 et seq.), consent to nomination of a
24 guardian of the person or of a guardian of the person and the
25 estate given by an Indian child's parent is not valid unless both of
26 the following occur:

27 (1) The consent is executed in writing at least 10 days after the
28 child's birth and recorded before a judge.

29 (2) The judge certifies that the terms and consequences of the
30 consent were fully explained in detail in English and were fully
31 understood by the parent or that they were interpreted into a
32 language that the parent understood.

33 (b) The parent of an Indian child may withdraw his or her
34 consent to guardianship for any reason at any time prior to the
35 entry of a final decree of adoption and the child shall be returned
36 to the parent.

37 ~~SEC. 24.~~

38 *SEC. 21.* Section 1510 of the Probate Code is amended to
39 read:

1 1510. (a) A relative or other person on behalf of the minor,
2 or the minor if 12 years of age or older, may file a petition for the
3 appointment of a guardian of the minor.

4 (b) The petition shall request that a guardian of the person or
5 estate of the minor, or both, be appointed, shall specify the name
6 and address of the proposed guardian and the name and date of
7 birth of the proposed ward, and shall state that the appointment is
8 necessary or convenient.

9 (c) The petition shall set forth, so far as is known to the
10 petitioner, the names and addresses of all of the following:

11 (1) The parents of the proposed ward.

12 (2) The person having legal custody of the proposed ward and,
13 if that person does not have the care of the proposed ward, the
14 person having the care of the proposed ward.

15 (3) The relatives of the proposed ward within the second
16 degree.

17 (4) In the case of a guardianship of the estate, the spouse of the
18 proposed ward.

19 (5) Any person nominated as guardian for the proposed ward
20 under Section 1500 or 1501.

21 (6) In the case of a guardianship of the person involving an
22 Indian child, any Indian custodian and the Indian child's tribe.

23 (d) If the proposed ward is a patient in or on leave of absence
24 from a state institution under the jurisdiction of the State
25 Department of Mental Health or the State Department of
26 Developmental Services and that fact is known to the petitioner,
27 the petition shall state that fact and name the institution.

28 (e) The petition shall state, so far as is known to the petitioner,
29 whether or not the proposed ward is receiving or is entitled to
30 receive benefits from the Veterans Administration and the
31 estimated amount of the monthly benefit payable by the Veterans
32 Administration for the proposed ward.

33 (f) If the petitioner has knowledge of any pending adoption,
34 juvenile court, marriage dissolution, domestic relations, custody,
35 or other similar proceeding affecting the proposed ward, the
36 petition shall disclose the pending proceeding.

37 (g) If the petitioners have accepted or intend to accept physical
38 care or custody of the child with intent to adopt, whether formed
39 at the time of placement or formed subsequent to placement, the

1 petitioners shall so state in the guardianship petition, whether or
2 not an adoption petition has been filed.

3 (h) If the proposed ward is or becomes the subject of an
4 adoption petition, the court shall order the guardianship petition
5 consolidated with the adoption petition.

6 (i) If the proposed ward is or may be an Indian child, the
7 petition shall state that fact.

8 ~~SEC. 25.~~

9 *SEC. 22.* Section 1511 of the Probate Code is amended to
10 read:

11 1511. (a) Except as provided in subdivisions (f) and (g), at
12 least 15 days before the hearing on the petition for the
13 appointment of a guardian, notice of the time and place of the
14 hearing shall be given as provided in subdivisions (b), (c), (d),
15 and (e) of this section. The notice shall be accompanied by a
16 copy of the petition. The court may not shorten the time for
17 giving the notice of hearing under this section.

18 (b) Notice shall be served in the manner provided in Section
19 415.10 or 415.30 of the Code of Civil Procedure, or in any
20 manner authorized by the court, on all of the following persons:

- 21 (1) The proposed ward if 12 years of age or older.
22 (2) Any person having legal custody of the proposed ward, or
23 serving as guardian of the estate of the proposed ward.
24 (3) The parents of the proposed ward.
25 (4) Any person nominated as a guardian for the proposed ward
26 under Section 1500 or 1501.

27 (c) Notice shall be given by mail sent to their addresses stated
28 in the petition, or in any manner authorized by the court, to all of
29 the following:

- 30 (1) The spouse named in the petition.
31 (2) The relatives named in the petition, except that if the
32 petition is for the appointment of a guardian of the estate only the
33 court may dispense with the giving of notice to any one or more
34 or all of the relatives.
35 (3) The person having the care of the proposed ward if other
36 than the person having legal custody of the proposed ward.
37 (d) If notice is required by Section 1461 or Section 1542 to be
38 given to the Director of Mental Health or the Director of
39 Developmental Services or the Director of Social Services, notice
40 shall be mailed as so required.

1 (e) If the petition states that the proposed ward is receiving or
2 is entitled to receive benefits from the Veterans Administration,
3 notice shall be mailed to the office of the Veterans
4 Administration referred to in Section 1461.5.

5 (f) Unless the court orders otherwise, notice shall not be given
6 to any of the following:

7 (1) The parents or other relatives of a proposed ward who has
8 been relinquished to a licensed adoption agency.

9 (2) The parents of a proposed ward who has been judicially
10 declared free from their custody and control.

11 (g) Notice need not be given to any person if the court so
12 orders upon a determination of either of the following:

13 (1) The person cannot with reasonable diligence be given the
14 notice.

15 (2) The giving of the notice would be contrary to the interest
16 of justice.

17 (h) Before the appointment of a guardian is made, proof shall
18 be made to the court that each person entitled to notice under this
19 section either:

20 (1) Has been given notice as required by this section.

21 (2) Has not been given notice as required by this section
22 because the person cannot with reasonable diligence be given the
23 notice or because the giving of notice to that person would be
24 contrary to the interest of justice.

25 (i) If notice is required by Section 1460.2 to be given to an
26 Indian custodian or tribe, notice shall be mailed as so required.

27 ~~SEC. 26.~~

28 *SEC. 23.* Section 1513 of the Probate Code is amended to
29 read:

30 1513. (a) Unless waived by the court, a court investigator,
31 probation officer, or domestic relations investigator may make an
32 investigation and file with the court a report and recommendation
33 concerning each proposed guardianship of the person or
34 guardianship of the estate. Investigations where the proposed
35 guardian is a relative shall be made by a court investigator.
36 Investigations where the proposed guardian is a nonrelative shall
37 be made by the county agency designated to investigate potential
38 dependency. The report for the guardianship of the person shall
39 include, but need not be limited to, an investigation and
40 discussion of all of the following:

1 (1) A social history of the guardian.

2 (2) A social history of the proposed ward, including, to the
3 extent feasible, an assessment of any identified developmental,
4 emotional, psychological, or educational needs of the proposed
5 ward and the capability of the petitioner to meet those needs.

6 (3) The relationship of the proposed ward to the guardian,
7 including the duration and character of the relationship, where
8 applicable, the circumstances whereby physical custody of the
9 proposed ward was acquired by the guardian, and a statement of
10 the proposed ward's attitude concerning the proposed
11 guardianship, unless the statement of the attitude is affected by
12 the proposed ward's developmental, physical, or emotional
13 condition.

14 (4) The anticipated duration of the guardianship and the plans
15 of both natural parents and the proposed guardian for the stable
16 and permanent home for the child. The court may waive this
17 requirement for cases involving relative guardians.

18 (b) The report shall be read and considered by the court prior
19 to ruling on the petition for guardianship, and shall be reflected
20 in the minutes of the court. The person preparing the report may
21 be called and examined by any party to the proceeding.

22 (c) If the investigation finds that any party to the proposed
23 guardianship alleges the minor's parent is unfit, as defined by
24 Section 300 of the Welfare and Institutions Code, the case shall
25 be referred to the county agency designated to investigate
26 potential dependencies. Guardianship proceedings shall not be
27 completed until the investigation required by Sections 328 and
28 329 of the Welfare and Institutions Code is completed and a
29 report is provided to the court in which the guardianship
30 proceeding is pending.

31 (d) The report authorized by this section is confidential and
32 shall only be made available to persons who have been served in
33 the proceedings or their attorneys. The clerk of the court shall
34 make provisions for the limitation of the report exclusively to
35 persons entitled to its receipt.

36 (e) For the purpose of writing the report authorized by this
37 section, the person making the investigation and report shall have
38 access to the proposed ward's school records, probation records,
39 and public and private social services records, and to an oral or
40 written summary of the proposed ward's medical records and

1 psychological records prepared by any physician, psychologist,
2 or psychiatrist who made or who is maintaining those records.
3 The physician, psychologist, or psychiatrist shall be available to
4 clarify information regarding these records pursuant to the
5 investigator's responsibility to gather and provide information for
6 the court.

7 (f) This section does not apply to guardianships resulting from
8 a permanency plan for a dependent child pursuant to Section
9 ~~366.25~~ 366.26 of the Welfare and Institutions Code.

10 (g) For purposes of this section, a "relative" means a person
11 who is a spouse, parent, stepparent, brother, sister, stepbrother,
12 stepsister, half-brother, half-sister, uncle, aunt, niece, nephew,
13 first cousin, or any person denoted by the prefix "grand" or
14 "great," or the spouse of any of these persons, even after the
15 marriage has been terminated by death or dissolution.

16 (h) In an Indian child custody proceeding, the person making
17 the investigation and report shall consult with the Indian child's
18 tribe and include in the report information provided by the tribe.

19 ~~SEC. 27.~~

20 *SEC. 24.* Section 1516.5 of the Probate Code is amended to
21 read:

22 1516.5. (a) A proceeding to have a child declared free from
23 the custody and control of one or both parents may be brought in
24 the guardianship proceeding pursuant to Part 4 (commencing
25 with Section 7800) of Division 12 of the Family Code, if all of
26 the following requirements are satisfied:

27 (1) One or both parents do not have the legal custody of the
28 child.

29 (2) The child has been in the physical custody of the guardian
30 for a period of not less than two years.

31 (3) The court finds that the child would benefit from being
32 adopted by his or her guardian. In making this determination, the
33 court shall consider all factors relating to the best interest of the
34 child, including, but not limited to, the nature and extent of the
35 relationship between all of the following:

36 (A) The child and the birth parent.

37 (B) The child and the guardian, including family members of
38 the guardian.

39 (C) The child and any siblings or half-siblings.

(b) The court shall appoint a court investigator or other qualified professional to investigate all factors enumerated in subdivision (a). The findings of the investigator or professional regarding those issues shall be included in the written report required pursuant to Section 7851 of the Family Code.

(c) The rights of the parent, including the rights to notice and counsel provided in Part 4 (commencing with Section 7800) of Division 12 of the Family Code, shall apply to actions brought pursuant to this section.

(d) This section does not apply to any child who is a dependent of the juvenile court or to any Indian child.

~~SEC. 28.~~

SEC. 25. Section 1601 of the Probate Code is amended to read:

1601. Upon petition of the guardian, a parent, the ward, or, in the case of an Indian child custody proceeding, an Indian custodian or the ward's tribe, the court may make an order terminating the guardianship if the court determines that it is in the ward's best interest to terminate the guardianship. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

~~SEC. 29.~~

SEC. 26. Section 2112 of the Probate Code is repealed.

~~SEC. 30.~~

SEC. 27. Section 100 of the Welfare and Institutions Code is amended to read:

100. The Judicial Council shall establish a planning and advisory group consisting of appropriate professional and program specialists to recommend on the development of program guidelines and funding procedures consistent with this chapter. At a minimum, the council shall adopt program guidelines consistent with the guidelines established by the National Court Appointed Special Advocate Association, and with California law; but the council may require additional or more stringent standards. State funding shall be contingent on a program adopting and adhering to the program guidelines adopted by the council.

The program guidelines adopted by the council shall be adopted and incorporated into local rules of court by each

1 participating superior court as a prerequisite to funding pursuant
2 to this chapter.

3 The council shall adopt program guidelines and criteria for
4 funding which encourage multicounty CASA programs where
5 appropriate, and shall in no case provide for funding more than
6 one program per county, except where the additional CASA
7 programs are operated by an Indian tribe or Indian organization.

8 The council shall establish in a timely fashion a
9 request-for-proposal process to establish, maintain, or expand
10 local CASA programs and require local matching funds or
11 in-kind funds equal to the proposal request. The maximum state
12 grant per county program per year shall not exceed seventy
13 thousand dollars (\$70,000) in counties in which the population is
14 less than 700,000 and shall not exceed one hundred thousand
15 dollars (\$100,000) in counties in which the population is 700,000
16 or more, according to the annual population report provided by
17 the Department of Finance.

18 ~~SEC. 31.~~

19 *SEC. 28.* Section 110 is added to the Welfare and Institutions
20 Code, to read:

21 110. Nothing in this chapter shall be construed as limiting the
22 right of an Indian tribe or Indian organization to establish or
23 operate CASA programs independent of state funding or the
24 discretion of the court to appoint CASAs from those programs in
25 Indian child custody proceedings.

26 ~~SEC. 32.~~

27 *SEC. 29.* Section 224 is added to the Welfare and Institutions
28 Code, to read:

29 224. (a) The Legislature finds and declares the following:

30 (1) There is no resource that is more vital to the continued
31 existence and integrity of Indian tribes than their children, and
32 the State of California has an interest in protecting Indian
33 children who are members of, or are eligible for membership in,
34 an Indian tribe. The state is committed to protecting the essential
35 tribal relations and best interest of an Indian child by promoting
36 practices, in accordance with the Indian Child Welfare Act (25
37 U.S.C. Sec. 1901 et seq.) and other applicable law, designed to
38 prevent the child's involuntary out-of-home placement and,
39 whenever that placement is necessary or ordered, by placing the
40 child, whenever possible, in a placement that reflects the unique

1 values of the child's tribal culture and is best able to assist the
2 child in establishing, developing, and maintaining a political,
3 cultural, and social relationship with the child's tribe and tribal
4 community.

5 (2) It is in the interest of an Indian child that the child's
6 membership in the child's Indian tribe and connection to the
7 tribal community be encouraged and protected, regardless of
8 whether the child is in the physical custody of an Indian parent or
9 Indian custodian at the commencement of a child custody
10 proceeding, the parental rights of the child's parents have been
11 terminated, or *where* the child has resided or been domiciled ~~on~~
12 ~~an Indian reservation.~~

13 (b) In all Indian child custody proceedings, as defined in the
14 federal Indian Child Welfare Act the court shall consider all of
15 the findings contained in subdivision (a), strive to promote the
16 stability and security of Indian tribes and families, comply with
17 the federal Indian Child Welfare Act, and seek to protect the best
18 interest of the child. Whenever an Indian child is removed from a
19 foster care home or institution, guardianship, or adoptive
20 placement for the purpose of further foster care, guardianship, or
21 adoptive placement, placement of the child shall be in
22 accordance with the Indian Child Welfare Act.

23 (c) A determination by an Indian tribe that an unmarried
24 person, who is under the age of 18 years, is either (1) a member
25 of an Indian tribe or (2) eligible for membership in an Indian
26 tribe and a biological child of a member of an Indian tribe shall
27 constitute a significant political affiliation with the tribe and shall
28 require the application of the federal Indian Child Welfare Act to
29 the proceedings.

30 ~~(d) (1) If the Indian Child Welfare Act applies to a child~~
31 ~~eustody proceeding under this code, to the extent that this code or~~
32 ~~the Adoption and Safe Families Act of 1999 (P.L. 105-89) are~~
33 ~~inconsistent or in conflict with the Indian Child Welfare Act, the~~
34 ~~provisions of the Indian Child Welfare Act shall prevail.~~

35 (2)

36 (d) In any case in which this code or other applicable state or
37 federal law provides a higher standard of protection to the rights
38 of the parent or Indian custodian of an Indian child, or the Indian
39 child's tribe, than the rights provided under the Indian Child
40 Welfare Act, the court shall apply the higher standard.

(e) Any Indian child, the Indian child's tribe, or the parent or Indian custodian from whose custody the child has been removed, may petition ~~any court of competent jurisdiction~~ *the court* to invalidate an action in an Indian child custody proceeding for foster care or guardianship placement or termination of parental rights if the action violated Sections 1911, 1912, and 1913 of the Indian Child Welfare Act.

~~SEC. 33.~~

SEC. 30. Section 224.1 is added to the Welfare and Institutions Code, to read:

224.1. (a) As used in this division, unless the context otherwise requires, the terms "Indian," "Indian child," "Indian child's tribe," "Indian custodian," "Indian tribe," "reservation," and "tribal court" shall be defined as provided in Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(b) As used in connection with an Indian child custody proceeding, the terms "extended family member" and "parent" shall be defined as provided in Section 1903 of the Indian Child Welfare Act.

(c) "Indian child custody proceeding" means a "child custody proceeding" within the meaning of Section 1903 of the Indian Child Welfare Act, including a proceeding for temporary or long-term foster care or guardianship placement, termination of parental rights, preadoptive placement after termination of parental rights, or adoptive placement. "Indian child custody proceeding" does not include a voluntary foster care or guardianship placement if the parent or Indian custodian retains the right to have the child returned upon demand.

(d) If an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe, the court ~~may~~ *shall* make a determination, in writing together with the reasons for it, as to which tribe is the Indian child's tribe *for purposes of the Indian child custody proceeding.* ~~If the court makes that finding, it shall do so~~ *The court shall make that determination as follows:*

(1) If the Indian child is or becomes a member of only one tribe, that tribe shall be designated as the Indian child's tribe, even though the child is eligible for membership in another tribe.

(2) If an Indian child is or becomes a member of more than one tribe, or is not a member of any tribe but is eligible for

1 membership in more than one tribe, the tribe with which the child
2 has the more significant contacts shall be designated as the
3 Indian child's tribe. In determining which tribe the child has the
4 more significant contacts with, the court shall consider, among
5 other things, the following factors:

6 (A) The length of residence on or near the reservation of each
7 tribe and frequency of contact with each tribe.

8 (B) The child's participation in activities of each tribe.

9 (C) The child's fluency in the language of each tribe.

10 (D) Whether there has been a previous adjudication with
11 respect to the child by a court of one of the tribes.

12 (E) Residence on or near one of the tribes' reservations by the
13 child parents, Indian custodian or extended family members.

14 (F) Tribal membership of custodial parent or Indian custodian.

15 (G) Interest asserted by each tribe in response to the notice
16 specified in Section 224.2.

17 (H) The child's self-identification.

18 (3) If an Indian child becomes a member of a tribe other than
19 the one designated by the court as the Indian child's tribe under
20 paragraph (2), actions taken based on the court's determination
21 prior to the child's becoming a tribal member continue to be
22 valid.

23 ~~SEC. 34.~~

24 *SEC. 31.* Section 224.2 is added to the Welfare and
25 Institutions Code, to read:

26 224.2. (a) If the court, a social worker, or probation officer
27 knows or has reason to know that an Indian child is involved, any
28 notice sent in an Indian child custody proceeding under this code
29 shall be sent to the minor's parents or legal guardian, Indian
30 custodian, if any, and the minor's tribe and comply with all of the
31 following requirements:

32 (1) Notice shall be sent by registered or certified mail with
33 return receipt ~~requested, and additional requested. Additional~~
34 notice by first-class mail is ~~recommended~~ *recommended, but not*
35 *required.*

36 (2) Notice to the tribe shall be to the tribal chairperson, unless
37 the tribe has designated another agent for service.

38 (3) Notice shall be sent to all tribes of which the child may be
39 a member or eligible for membership, until the court makes a
40 determination as to which tribe is the child's tribe in accordance

1 with subdivision (d) of Section 224.1, after which notice need
2 only be sent to the tribe determined to be the Indian child's tribe.

3 (4) ~~Notice~~ *Notice, to the extent required by federal law*, shall
4 be sent to the Secretary of the Interior's designated agent, the
5 Sacramento Area Director, Bureau of Indian Affairs. If the
6 identity or location of the parents, Indian custodians, or the
7 minor's tribe is known, a copy of the notice shall also be sent
8 directly to the Secretary of the Interior, unless the Secretary of
9 the Interior has waived the notice in writing and the person
10 responsible for giving notice under this section has filed proof of
11 the waiver with the court.

12 (5) In addition to the information specified in other sections of
13 this article, notice shall include all of the following information:

14 (A) The name, birthdate, and birthplace of the Indian ~~child~~
15 *child, if known*.

16 (B) The name of the Indian tribe in which the child is a
17 member or may be eligible for ~~membership~~ *membership, if*
18 *known*.

19 (C) All names known of the Indian child's biological parents,
20 grandparents, and great-grandparents, or Indian custodians,
21 including maiden, married and former names or aliases, as well
22 as their current and former addresses, birthdates, places of birth
23 and death, tribal enrollment numbers, and any other identifying
24 ~~information~~ *information, if known*.

25 (D) A copy of the petition by which the proceeding was
26 initiated.

27 (E) A copy of the child's birth certificate, if available.

28 (F) The location, mailing address, and telephone number of
29 the court and all parties notified pursuant to this section.

30 (G) A statement of the following:

31 (i) The absolute right of the child's parents, Indian custodians,
32 and tribe to intervene in the proceeding.

33 (ii) The right of the child's parents, Indian custodians, and
34 tribe to petition the court to transfer the proceeding to the tribal
35 court of the Indian child's tribe, absent objection by either parent
36 and subject to declination by the tribal court.

37 (iii) The right of the child's parents, Indian custodians, and
38 tribe to, upon request, be granted up to an additional 20 days
39 from the receipt of the notice to prepare for the proceeding.

1 (iv) The potential legal consequences of the proceedings on
2 the future custodial and parental rights of the child's parents or
3 Indian custodians.

4 (v) That if the parents or Indian custodians are unable to afford
5 counsel in, counsel will be appointed to represent the parents or
6 Indian custodians *pursuant to Section 1912 of the Indian Child*
7 *Welfare Act (25 U.S.C. Sec. 1901 et seq.)*.

8 (vi) That the information contained in the notice, petition,
9 pleading, and other court documents is confidential, so ~~tribal~~
10 ~~officials~~ *any person or entity notified* shall maintain the
11 confidentiality of the information contained in the notice
12 concerning the particular proceeding and not reveal it to anyone
13 who does not need the information in order to exercise the tribe's
14 rights under the Indian Child Welfare Act (25 U.S.C. Sec. 1901
15 et seq.).

16 (b) Notice shall be sent whenever it is known or there is reason
17 to know that an Indian child is involved, and for every hearing
18 thereafter, including, but not limited to, the hearing at which a
19 final adoption order is to be granted, unless it is determined that
20 the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does
21 not apply to the case in accordance with Section 224.3. After *a*
22 *tribe acknowledges that the child is a member or eligible for*
23 *membership in that tribe, or after* a tribe intervenes in a
24 proceeding, the information set out in paragraphs subparagraphs
25 (C), (D), (E), and (G) of paragraph (5) of subdivision (a) need not
26 be included with the notice.

27 (c) Proof of the notice, including copies of notices sent and all
28 return receipts and responses received, shall be filed with the
29 court in advance of the hearing except as permitted under
30 subdivision (d).

31 (d) No proceeding shall be held until at least 10 days after
32 receipt of notice by the parent, Indian custodian, the tribe, or the
33 Bureau of Indian Affairs, except for the detention hearing,
34 provided that notice of the detention hearing shall be given as
35 soon as possible after the filing of the petition initiating the
36 proceeding and proof of the notice is filed with the court within
37 10 days after the filing of the petition. With the exception of the
38 detention hearing, the parent, Indian custodian, or the tribe shall,
39 upon request, be granted up to 20 additional days to prepare for
40 that proceeding. Nothing herein shall be construed as limiting the

rights of the parent, Indian custodian, or tribe to more than 10 days notice when a lengthier notice period is required *by statute*.

(e) With respect to giving notice to Indian tribes, a party shall be subject to court sanctions if that person knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child, or counsels a party to do so.

~~SEC. 35.~~

SEC. 32. Section 224.3 is added to the Welfare and Institutions Code, to read:

224.3. (a) The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300, 601, or 602 is to be, or has been, filed is or may be an Indian child in all dependency proceedings and in any juvenile wardship proceedings if the child is at risk of entering foster care or is in foster care.

(b) The circumstances that may provide reason to know the child is an Indian child include, but are not limited to, the following:

(1) A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family provides information suggesting the child is a member of a tribe or eligible for membership in a tribe or one or more of the child's biological parents, grandparents, or great-grandparents are or were a member of a tribe.

(2) The residence or domicile of the child, the child's parents, or Indian custodian is in a predominantly Indian community.

(3) The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service.

(c) If the court, social worker, or probation officer knows or has reason to know that an Indian child is involved, the social worker or probation officer is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members to gather the information required in paragraph (5) of subdivision (a) of Section 224.2, contacting the Bureau of Indian Affairs and the

1 State Department of Social Services for assistance in identifying
2 the names and contact information of the tribes in which the child
3 may be a member or eligible for membership in and contacting
4 the tribes and any other person that reasonably can be expected to
5 have information regarding the child's membership status or
6 eligibility.

7 (d) If the court, social worker, or probation officer knows or
8 has reason to know that an Indian child is involved, the social
9 worker or probation officer shall provide notice in accordance
10 with paragraph (5) of subdivision (a) of Section 224.2.

11 (e) (1) A determination by an Indian tribe that a child is or is
12 not a member of or eligible for membership in that tribe, or
13 testimony attesting to that status by a person authorized by the
14 tribe to provide that determination, shall be conclusive.
15 Information that the child is not enrolled or eligible for
16 enrollment in the tribe is not determinative of the child's
17 membership status unless the tribe also confirms in writing that
18 enrollment is a prerequisite for membership under tribal law or
19 custom.

20 (2) In the absence of a contrary determination by the tribe, a
21 determination by the Bureau of Indian Affairs that a child is or is
22 not a member of or eligible for membership in that tribe is
23 conclusive.

24 (3) If proper and adequate notice has been provided pursuant
25 to Section 224.2, and neither a tribe nor the Bureau of Indian
26 Affairs has provided a determinative response within 60 days
27 after receiving that notice, the court may determine that the
28 Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does not
29 apply to the proceedings, provided that the court shall reverse its
30 determination *of the inapplicability of the Indian Child Welfare*
31 *Act* and apply the act *prospectively* if a tribe or the Bureau of
32 Indian Affairs subsequently confirms that the child is an Indian
33 child.

34 (f) Notwithstanding a determination that the Indian Child
35 Welfare Act does not apply to the proceedings made in
36 accordance with subdivision (e), if the court, social worker, or
37 probation officer subsequently receives any information required
38 under paragraph (5) of subdivision (a) of Section 224.2 that was
39 not previously available or included in the notice issued under
40 Section 224.2, the social worker or probation officer shall

1 provide the additional information to any tribes entitled to notice
2 under paragraph (3) of subdivision (a) of Section 224.2 and the
3 Bureau of Indian Affairs.

4 ~~SEC. 36.~~

5 *SEC. 33.* Section 224.4 is added to the Welfare and
6 Institutions Code, to read:

7 224.4. ~~(a)~~ The Indian child's tribe and Indian custodian have
8 the right to intervene at any point in an Indian child custody
9 proceeding.

10 ~~(b) Each party to a child custody proceeding involving an~~
11 ~~Indian child shall have the right to examine all reports or other~~
12 ~~documents filed with the court upon which any decision with~~
13 ~~respect to the action may be based. With the exception of the~~
14 ~~initial petition commencing the proceedings, any report filed in~~
15 ~~connection with a hearing in an Indian child custody proceeding~~
16 ~~shall be provided to each party to the proceeding sufficiently in~~
17 ~~advance of the hearing to permit the party to subpoena persons~~
18 ~~whose hearsay statements are contained in the report and to~~
19 ~~produce evidence in rebuttal. The court shall grant a reasonable~~
20 ~~continuance, not to exceed 20 calendar days, upon request by any~~
21 ~~party on the ground that the report was not provided at least 10~~
22 ~~calendar days prior to the hearing, which may be accomplished~~
23 ~~by mailing the report at least 15 days prior to the hearing, unless~~
24 ~~the party has expressly waived the requirement that the report be~~
25 ~~provided in advance of the hearing or the court finds by clear and~~
26 ~~convincing evidence that the party's ability to proceed at the~~
27 ~~hearing is not prejudiced by the lack of timely service of the~~
28 ~~report.~~

29 ~~SEC. 37.~~

30 *SEC. 34.* Section 224.5 is added to the Welfare and
31 Institutions Code, to read:

32 224.5. In an Indian child custody proceeding, the court shall
33 give full faith and credit to the public acts, records, judicial
34 proceedings, and judgments of any Indian tribe applicable to the
35 proceeding *to the same extent that such entities give full faith and*
36 *credit to the public acts, records, judicial proceedings, and*
37 *judgments of any other entity.*

38 ~~SEC. 38.~~

39 *SEC. 35.* Section 224.6 is added to the Welfare and
40 Institutions Code, to read:

224.6. (a) When testimony of a “qualified expert witness” is required in an Indian child custody proceeding, a “qualified expert witness” may include, but is not limited to, a social worker, sociologist, physician, psychologist, traditional tribal therapist and healer, tribal spiritual leader, tribal historian, or tribal elder, provided the individual is not an employee of the person or agency recommending foster care placement or termination of parental rights.

(b) In considering whether to involuntarily place an Indian child in foster care or to terminate the parental rights of the parent of an Indian child, the court shall:

(1) Require that a qualified expert witness testify regarding whether *continued* custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(2) Consider evidence concerning the prevailing social and cultural standards of the Indian child’s tribe, including that tribe’s family organization and child-rearing practices.

~~(c) In the following descending order of preference, a qualified expert witness is a person who is one of the following:~~

~~(1) A member of the Indian child’s tribe or other individual who is recognized by the child’s tribal community as knowledgeable regarding tribal customs as the customs pertain to family organization or child-rearing practices.~~

~~(2) A lay expert having substantial experience in the delivery of child and family services to Indians and extensive knowledge of the social and cultural standards and child-rearing practices of Indian tribes, specifically the Indian child’s tribe, if possible.~~

~~(3) A professional person having substantial education and experience in Indian child and family services and in the social and cultural standards of Indian tribes, specifically, the Indian child’s tribe, if possible.~~

~~(4) A professional person having substantial education and experience in the person’s professional specialty. Prior to accepting the testimony of a qualified expert witness under this paragraph, the court shall document the efforts made to secure a qualified expert witness described in paragraphs (1), (2), and (3). The efforts shall include, but are not limited to, contacting the Indian child’s tribe’s governing body, that tribe’s Indian child welfare office, and the tribe’s social service office.~~

1 ~~(d)~~

2 (c) *Persons with the following characteristics are most likely*
3 *to meet the requirements for a qualified expert witness for*
4 *purposes of Indian child custody proceedings:*

5 (1) *A member of the Indian child's tribe who is recognized by*
6 *the tribal community as knowledgeable in tribal customs as they*
7 *pertain to family organization and childrearing practices.*

8 (2) *Any expert witness having substantial experience in the*
9 *delivery of child and family services to Indians, and extensive*
10 *knowledge of prevailing social and cultural standards and*
11 *childrearing practices within the Indian child's tribe.*

12 (3) *A professional person having substantial education and*
13 *experience in the area of his or her specialty.*

14 (d) *The court or any party may request the assistance of the*
15 *Indian child's tribe or Bureau of Indian Affairs agency serving*
16 *the Indian child's tribe in locating persons qualified to serve as*
17 *expert witnesses.*

18 (e) *The court may accept a declaration or affidavit from a*
19 *qualified expert witness in lieu of testimony only if the parties*
20 *have so stipulated in writing and the court is satisfied the*
21 *stipulation is made knowingly, intelligently, and voluntarily.*

22 ~~SEC. 39.~~

23 SEC. 36. *Section 290.1 of the Welfare and Institutions Code*
24 *is amended to read:*

25 290.1. *If the probation officer or social worker determines*
26 *that the child shall be retained in custody, he or she shall*
27 *immediately file a petition pursuant to Section 332 with the clerk*
28 *of the juvenile court, who shall set the matter for hearing on the*
29 *detention hearing calendar. The probation officer or social*
30 *worker shall serve notice as prescribed in this section.*

31 (a) *Notice shall be given to the following persons whose*
32 *whereabouts are known or become known prior to the initial*
33 *petition hearing:*

34 (1) *The mother.*

35 (2) *The father or fathers, presumed and alleged.*

36 (3) *The legal guardian or guardians.*

37 (4) *The child, if the child is 10 years of age or older.*

38 (5) *Any known sibling of the child who is the subject of the*
39 *hearing if that sibling either is the subject of a dependency*
40 *proceeding or has been adjudged to be a dependent child of the*

1 juvenile court. If the sibling is 10 years of age or older, the
2 sibling, the sibling's caregiver, and the sibling's attorney. If the
3 sibling is under 10 years of age, the sibling's caregiver and the
4 sibling's attorney. However, notice is not required to be given to
5 any sibling whose matter is calendared in the same court on the
6 same day.

7 (6) If there is no parent or guardian residing in California, or if
8 the residence is unknown, then to any adult relative residing
9 within the county or if none, the adult relative residing nearest
10 the court.

11 (7) The attorney for the parent or parents, or legal guardian or
12 guardians.

13 (8) The district attorney, if the district attorney has notified the
14 clerk of the court that he or she wishes to receive the petition,
15 containing the time, date, and place of the hearing.

16 (9) The probate department of the superior court that
17 appointed the guardian, if the child is a ward of a guardian
18 appointed pursuant to the Probate Code.

19 (b) No notice is required for a parent whose parental rights
20 have been terminated.

21 (c) The notice shall be given as soon as possible after the filing
22 of the petition.

23 (d) The notice of the initial petition hearing shall include all of
24 the following:

25 (1) The date, time, and place of the hearing.

26 (2) The name of the child.

27 (3) A copy of the petition.

28 (e) Service of the notice shall be written or oral. If the person
29 being served cannot read, notice shall be given orally.

30 (f) If the probation officer or social worker knows or has
31 reason to know that an Indian child is involved, notice shall be
32 given in accordance with Section 224.2.

33 ~~SEC. 40.~~

34 *SEC. 37.* Section 290.2 of the Welfare and Institutions Code
35 is amended to read:

36 290.2. Upon the filing of a petition by a probation officer or
37 social worker, the clerk of the juvenile court shall issue notice, to
38 which shall be attached a copy of the petition, and he or she shall
39 cause the same to be served as prescribed in this section.

1 (a) Notice shall be given to the following persons whose
2 address is known or becomes known prior to the initial petition
3 hearing:

4 (1) The mother.

5 (2) The father or fathers, presumed and alleged.

6 (3) The legal guardian or guardians.

7 (4) The child, if the child is 10 years of age or older.

8 (5) Any known sibling of the child who is the subject of the
9 hearing if that sibling either is the subject of a dependency
10 proceeding or has been adjudged to be a dependent child of the
11 juvenile court. If the sibling is 10 years of age or older, the
12 sibling, the sibling's caregiver, and the sibling's attorney. If the
13 sibling is under 10 years of age, the sibling's caregiver and the
14 sibling's attorney. However, notice is not required to be given to
15 any sibling whose matter is calendared in the same court on the
16 same day.

17 (6) If there is no parent or guardian residing in California, or if
18 the residence is unknown, to any adult relative residing within
19 the county or if none, the adult relative residing nearest the court.

20 (7) Upon reasonable notification by counsel representing the
21 child, parent, or guardian, the clerk of the court shall give notice
22 to that counsel as soon as possible.

23 (8) The district attorney, if the district attorney has notified the
24 clerk of the court that he or she wishes to receive the petition,
25 containing the time, date, and place of the hearing.

26 (9) The probate department of the superior court that
27 appointed the guardian, if the child is a ward of a guardian
28 appointed pursuant to the Probate Code.

29 (b) No notice is required for a parent whose parental rights
30 have been terminated.

31 (c) Notice shall be served as follows:

32 (1) If the child is retained in custody, the notice shall be given
33 to the persons required to be noticed as soon as possible, and at
34 least five days before the hearing, unless the hearing is set to be
35 heard in less than five days in which case notice shall be given at
36 least 24 hours prior to the hearing.

37 (2) If the child is not retained in custody, the notice shall be
38 given to those persons required to be noticed at least 10 days
39 prior to the date of the hearing. If any person who is required to
40 be given notice is known to reside outside of the county, the clerk

1 of the juvenile court shall mail the notice and copy of the petition
2 by first-class mail, to that person as soon as possible after the
3 filing of the petition and at least 10 days before the time set for
4 hearing. Failure to respond to the notice is not cause for an arrest
5 or detention. In the instance of a failure to appear after notice by
6 first-class mail, the court shall direct that the notice and copy of
7 the petition be personally served on all persons required to
8 receive the notice and copy of the petition. For these purposes,
9 personal service of the notice and copy of the petition outside of
10 the county at least 10 days before the time set for hearing is
11 equivalent to service by first-class mail. Service may be waived
12 by any person by a voluntary appearance entered in the minutes
13 of the court or by a written waiver of service filed with the clerk
14 of the court at, or prior to, the hearing.

15 (d) The notice of the initial petition hearing shall include all of
16 the following:

17 (1) The date, time, and place of the hearing.

18 (2) The name of the child.

19 (3) A copy of the petition.

20 (e) If the court knows or has reason to know that an Indian
21 child is involved, notice shall be given in accordance with
22 Section 224.2.

23 ~~SEC. 41.~~

24 *SEC. 38.* Section 291 of the Welfare and Institutions Code is
25 amended to read:

26 291. After the initial petition hearing, the clerk of the court
27 shall cause the notice to be served in the following manner:

28 (a) Notice of the hearing shall be given to the following
29 persons:

30 (1) The mother.

31 (2) The father or fathers, presumed and alleged.

32 (3) The legal guardian or guardians.

33 (4) The child, if the child is 10 years of age or older.

34 (5) Any known sibling of the child who is the subject of the
35 hearing if that sibling either is the subject of a dependency
36 proceeding or has been adjudged to be a dependent child of the
37 juvenile court. If the sibling is 10 years of age or older, the
38 sibling, the sibling's caregiver, and the sibling's attorney. If the
39 sibling is under 10 years of age, the sibling's caregiver and the
40 sibling's attorney. However, notice is not required to be given to

1 any sibling whose matter is calendared in the same court on the
2 same day.

3 (6) Each attorney of record unless counsel of record is present
4 in court when the hearing is scheduled, then no further notice
5 need be given.

6 (7) If there is no parent or guardian residing in California, or if
7 the residence is unknown, then to any adult relative residing
8 within the county or if none, the adult relative residing nearest
9 the court.

10 (b) No notice is required for a parent whose parental rights
11 have been terminated.

12 (c) Notice shall be served as follows:

13 (1) If the child is detained, the notice shall be given to the
14 persons required to be noticed as soon as possible, and at least
15 five days before the hearing, unless the hearing is set less than
16 five days and then at least 24 hours prior to the hearing.

17 (2) If the child is not detained, the notice shall be given to
18 those persons required to be noticed at least 10 days prior to the
19 date of the hearing.

20 (d) The notice shall include all of the following:

21 (1) The name and address of the person notified.

22 (2) The nature of the hearing.

23 (3) Each section and subdivision under which the proceeding
24 has been initiated.

25 (4) The date, time, and place of the hearing.

26 (5) The name of the child upon whose behalf the petition has
27 been brought.

28 (6) A statement that:

29 (A) If they fail to appear, the court may proceed without them.

30 (B) The child, parent, guardian, Indian custodian, or adult
31 relative to whom notice is required to be given is entitled to have
32 an attorney present at the hearing.

33 (C) If the parent, guardian, Indian custodian, or adult relative
34 is indigent and cannot afford an attorney, and desires to be
35 represented by an attorney, the parent, guardian, Indian
36 custodian, or adult relative shall promptly notify the clerk of the
37 juvenile court.

38 (D) If an attorney is appointed to represent the parent,
39 guardian, Indian custodian, or adult relative, the represented

1 person shall be liable for all or a portion of the costs to the extent
2 of his or her ability to pay.

3 (E) The parent, guardian, Indian custodian, or adult relative
4 may be liable for the costs of support of the child in any
5 out-of-home placement.

6 (7) A copy of the petition.

7 (e) Service of the notice of the hearing shall be given in the
8 following manner:

9 (1) If the child is detained and the persons required to be
10 noticed are not present at the initial petition hearing, they shall be
11 noticed by personal service or by certified mail, return receipt
12 requested.

13 (2) If the child is detained and the persons required to be
14 noticed are present at the initial petition hearing, they shall be
15 noticed by personal service or by first-class mail.

16 (3) If the child is not detained, the persons required to be
17 noticed shall be noticed by personal service or by first-class mail,
18 unless the person to be served is known to reside outside the
19 county, in which case service shall be by first-class mail.

20 (f) Any of the notices required to be given under this section
21 or Sections 290.1 and 290.2 may be waived by a party in person
22 or through his or her attorney, or by a signed written waiver filed
23 on or before the date scheduled for the hearing.

24 (g) If the court knows or has reason to know that an Indian
25 child is involved, notice shall be given in accordance with
26 Section 224.2.

27 ~~SEC. 42.~~

28 *SEC. 39.* Section 292 of the Welfare and Institutions Code is
29 amended to read:

30 292. The social worker or probation officer shall give notice
31 of the review hearing held pursuant to Section 364 in the
32 following manner:

33 (a) Notice of the hearing shall be given to the following
34 persons:

35 (1) The mother.

36 (2) The presumed father or any father receiving services.

37 (3) The legal guardian or guardians.

38 (4) The child, if the child is 10 years of age or older.

39 (5) Any known sibling of the child who is the subject of the
40 hearing if that sibling either is the subject of a dependency

proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.

(6) Each attorney of record, if that attorney was not present at the time that the hearing was set by the court.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) The notice of the hearing shall be served not earlier than 30 days, nor later than 15 days, before the hearing.

(d) The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice shall also include a statement that the child and the parent or parents or legal guardian or guardians have a right to be present at the hearing, to be represented by counsel at the hearing and the procedure for obtaining appointed counsel, and to present evidence regarding the proper disposition of the case. The notice shall also state that if the parent or parents or legal guardian or guardians fail to appear, the court may proceed without them.

(e) Service of the notice shall be by personal service, by first-class mail, or by certified mail, return receipt requested, addressed to the last known address of the person to be noticed.

(f) If the social worker or the probation officer knows or has reason to know that an Indian child is involved, notice shall be given in accordance with Section 224.2.

~~SEC. 43.~~

SEC. 40. Section 293 of the Welfare and Institutions Code is amended to read:

293. The social worker or probation officer shall give notice of the review hearings held pursuant to Section 366.21 or 366.22 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

(1) The mother.

(2) The presumed father or any father receiving services.

(3) The legal guardian or guardians.

1 (4) The child, if the child is 10 years of age or older.

2 (5) Any known sibling of the child who is the subject of the
3 hearing if that sibling either is the subject of a dependency
4 proceeding or has been adjudged to be a dependent child of the
5 juvenile court. If the sibling is 10 years of age or older, the
6 sibling, the sibling's caregiver, and the sibling's attorney. If the
7 sibling is under 10 years of age, the sibling's caregiver and the
8 sibling's attorney. However, notice is not required to be given to
9 any sibling whose matter is calendared in the same court on the
10 same day.

11 (6) In the case of a child removed from the physical custody of
12 his or her parent or legal guardian, the foster parents, relative
13 caregivers, community care facility, or foster family agency
14 having custody of the child. In a case in which a foster family
15 agency is notified of the hearing pursuant to this section, and the
16 child resides in a foster home certified by the foster family
17 agency, the foster family agency shall provide timely notice of
18 the hearing to the child's caregivers.

19 (7) Each attorney of record if that attorney was not present at
20 the time that the hearing was set by the court.

21 (b) No notice is required for a parent whose parental rights
22 have been terminated.

23 (c) The notice of hearing shall be served not earlier than 30
24 days, nor later than 15 days, before the hearing.

25 (d) The notice shall contain a statement regarding the nature of
26 the hearing to be held and any change in the custody or status of
27 the child being recommended by the supervising agency. If the
28 notice is to the child, parent or parents, or legal guardian or
29 guardians, the notice shall also advise them of the right to be
30 present, the right to be represented by counsel, the right to
31 request counsel, and the right to present evidence. The notice
32 shall also state that if the parent or parents or legal guardian or
33 guardians fail to appear, the court may proceed without them.

34 (e) Service of the notice shall be by first-class mail addressed
35 to the last known address of the person to be noticed or by
36 personal service on the person. Service of a copy of the notice
37 shall be by personal service or by certified mail, return receipt
38 requested, or any other form of notice that is equivalent to
39 service by first-class mail.

(f) Notice to a foster parent, a relative caregiver, a certified foster parent who has been approved for adoption, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, shall indicate that the person notified may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(g) If the social worker or probation officer knows or has reason to know that an Indian child is involved, notice shall be given in accordance with Section 224.2.

~~SEC. 44.~~

SEC. 41. Section 294 of the Welfare and Institutions Code is amended to read:

294. The social worker or probation officer shall give notice of a selection and implementation hearing held pursuant to Section 366.26 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

- (1) The mother.
- (2) The fathers, presumed and alleged.
- (3) The child, if the child is 10 years of age or older.
- (4) Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court. If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney. If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. However, notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.
- (5) The grandparents of the child, if their address is known and if the parent's whereabouts are unknown.

(6) All counsel of record.

(b) The following persons shall not be notified of the hearing:

(1) A parent who has relinquished the child to the State Department of Social Services or to a licensed adoption agency for adoption, and the relinquishment has been accepted and filed with notice as required under Section 8700 of the Family Code.

(2) An alleged father who has denied paternity and has executed a waiver of the right to notice of further proceedings.

1 (3) A parent whose parental rights have been terminated.

2 (c) (1) Service of the notice shall be completed at least 45
3 days before the hearing date. Service is deemed complete at the
4 time the notice is personally delivered to the person named in the
5 notice or 10 days after the notice has been placed in the mail, or
6 at the expiration of the time prescribed by the order for
7 publication.

8 (2) Service of notice in cases where publication is ordered
9 shall be completed at least 30 days before the date of the hearing.

10 (d) Regardless of the type of notice required, or the manner in
11 which it is served, once the court has made the initial finding that
12 notice has properly been given to the parent, or to any person
13 entitled to receive notice pursuant to this section, subsequent
14 notice for any continuation of a Section 366.26 hearing may be
15 by first-class mail to any last known address, by an order made
16 pursuant to Section 296, or by any other means that the court
17 determines is reasonably calculated, under any circumstance, to
18 provide notice of the continued hearing. However, if the
19 recommendation changes from the recommendation contained in
20 the notice previously found to be proper, notice shall be provided
21 to the parent, and to any person entitled to receive notice
22 pursuant to this section, regarding that subsequent hearing.

23 (e) The notice shall contain the following information:

24 (1) The date, time, and place of the hearing.

25 (2) The right to appear.

26 (3) The parents' right to counsel.

27 (4) The nature of the proceedings.

28 (5) The recommendation of the supervising agency.

29 (6) A statement that, at the time of hearing, the court is
30 required to select a permanent plan of adoption, legal
31 guardianship, or long-term foster care for the child.

32 (f) Notice to the parents may be given in any one of the
33 following manners:

34 (1) If the parent is present at the hearing at which the court
35 schedules a hearing pursuant to Section 366.26, the court shall
36 advise the parent of the date, time, and place of the proceedings,
37 their right to counsel, the nature of the proceedings, and the
38 requirement that at the proceedings the court shall select and
39 implement a plan of adoption, legal guardianship, or long-term
40 foster care for the child. The court shall direct the parent to

1 appear for the proceedings and then direct that the parent be
2 notified thereafter by first-class mail to the parent's usual place
3 of residence or business only.

4 (2) Certified mail, return receipt requested, to the parent's last
5 known mailing address. This notice shall be sufficient if the child
6 welfare agency receives a return receipt signed by the parent.

7 (3) Personal service to the parent named in the notice.

8 (4) Delivery to a competent person who is at least 18 years of
9 age at the parent's usual place of residence or business, and
10 thereafter mailed to the parent named in the notice by first-class
11 mail at the place where the notice was delivered.

12 (5) If the residence of the parent is outside the state, service
13 may be made as described in paragraph (1), (3), or (4) or by
14 certified mail, return receipt requested.

15 (6) If the recommendation of the probation officer or social
16 worker is legal guardianship or long-term foster care, service
17 may be made by first-class mail to the parent's usual place of
18 residence or business.

19 (7) If the parent's whereabouts are unknown and the parent
20 cannot, with reasonable diligence, be served in any manner
21 specified in paragraphs (1) to (6), inclusive, the petitioner shall
22 file an affidavit with the court at least 75 days before the hearing
23 date, stating the name of the parent and describing the efforts
24 made to locate and serve the parent.

25 (A) If the court determines that there has been due diligence in
26 attempting to locate and serve the parent and the probation
27 officer or social worker recommends adoption, service shall be to
28 that parent's attorney of record, if any, by certified mail, return
29 receipt requested. If the parent does not have an attorney of
30 record, the court shall order that service be made by publication
31 of citation requiring the parent to appear at the date, time, and
32 place stated in the citation, and that the citation be published in a
33 newspaper designated as most likely to give notice to the parent.
34 Publication shall be made once a week for four consecutive
35 weeks. Whether notice is to the attorney of record or by
36 publication, the court shall also order that notice be given to the
37 grandparents of the child by first-class mail.

38 (B) If the court determines that there has been due diligence in
39 attempting to locate and serve the parent and the probation
40 officer or social worker recommends legal guardianship or

1 long-term foster care, no further notice is required to the parent,
2 but the court shall order that notice be given to the grandparents
3 of the child by first-class mail.

4 (C) In any case where the residence of the parent becomes
5 known, notice shall immediately be served upon the parent as
6 provided for in either paragraph (2), (3), (4), (5), or (6).

7 (8) If the identity of one or both of the parents, or alleged
8 parents, of the child is unknown, or if the name of one or both
9 parents is uncertain, then that fact shall be set forth in the
10 affidavit and the court, if ordering publication, shall order the
11 published citation to be directed to either the father or mother, or
12 both, of the child, and to all persons claiming to be the father or
13 mother of the child, naming and otherwise describing the child.

14 (g) Notice to the child and all counsel of record shall be by
15 first-class mail.

16 (h) If the court knows or has reason to know that an Indian
17 child is involved, notice shall be given in accordance with
18 Section 224.2.

19 (i) Notwithstanding subdivision (a), if the attorney of record is
20 present at the time the court schedules a hearing pursuant to
21 Section 366.26, no further notice is required, except as required
22 by subparagraph (A) of paragraph (7) of subdivision (f).

23 (j) This section shall also apply to children adjudged wards
24 pursuant to Section 727.31.

25 ~~SEC. 45.~~

26 *SEC. 42.* Section 295 of the Welfare and Institutions Code is
27 amended to read:

28 295. The social worker or probation officer shall give notice
29 of review hearings held pursuant to Section 366.3 in the
30 following manner:

31 (a) Notice of the hearing shall be given to the following
32 persons:

33 (1) The mother.

34 (2) The presumed father.

35 (3) The legal guardian or guardians.

36 (4) The child, if the child is 10 years of age or older.

37 (5) Any known sibling of the child who is the subject of the
38 hearing if that sibling either is the subject of a dependency
39 proceeding or has been adjudged to be a dependent child of the
40 juvenile court. If the sibling is 10 years of age or older, the

1 sibling, the sibling's caregiver, and the sibling's attorney. If the
2 sibling is under 10 years of age, the sibling's caregiver and the
3 sibling's attorney. However, notice is not required to be given to
4 any sibling whose matter is calendared in the same court on the
5 same day.

6 (6) The foster parents, relative caregivers, community care
7 facility, or foster family agency having physical custody of the
8 child in the case of a child removed from the physical custody of
9 the parents or legal guardian.

10 (7) The attorney of record if that attorney of record was not
11 present at the time that the hearing was set by the court.

12 (8) The alleged father or fathers, but only if the
13 recommendation is to set a new hearing pursuant to Section
14 366.26.

15 (b) No notice is required for a parent whose parental rights
16 have been terminated.

17 (c) The notice of the review hearing shall be served no earlier
18 than 30 days, nor later than 15 days, before the hearing.

19 (d) The notice of the review hearing shall contain a statement
20 regarding the nature of the hearing to be held, any recommended
21 change in the custody or status of the child, and any
22 recommendation that the court set a new hearing pursuant to
23 Section 366.26 in order to select a more permanent plan.

24 (e) Service of notice shall be by first-class mail addressed to
25 the last known address of the person to be provided notice.

26 (f) If the child is ordered into a permanent plan of legal
27 guardianship, and subsequently a petition to terminate or modify
28 the guardianship is filed, the probation officer or social worker
29 shall serve notice of the petition not less than 15 court days prior
30 to the hearing on all persons listed in subdivision (a) and on the
31 court that established legal guardianship if it is in another county.

32 (g) If the social worker or probation officer knows or has
33 reason to know that an Indian child is involved, notice shall be
34 given in accordance with Section 224.2.

35 ~~SEC. 46.~~

36 *SEC. 43.* Section 297 of the Welfare and Institutions Code is
37 amended to read:

38 297. (a) Notice required for an initial petition filed pursuant
39 to Section 300 is applicable to a subsequent petition filed
40 pursuant to Section 342.

(b) Upon the filing of a supplemental petition pursuant to Section 387, the clerk of the juvenile court shall immediately set the matter for hearing within 30 days of the date of the filing, and the social worker or probation officer shall cause notice thereof to be served upon the persons required by, and in the manner prescribed by, Sections 290.1, 290.2, and 291.

(c) If a petition for modification has been filed pursuant to Section 388, and it appears that the best interest of the child may be promoted by the proposed change of the order, the recognition of a sibling relationship, or the termination of jurisdiction, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or if there is no attorney of record for the child, to the child, and his or her parent or parents or legal guardian or guardians in the manner prescribed by Section 291 unless a different manner is prescribed by the court.

(d) If the court knows or has reason to know that an Indian child is involved, notice shall be given in accordance with Section 224.2.

~~SEC. 47.~~

SEC. 44. Section 305.5 of the Welfare and Institutions Code is amended to read:

305.5. (a) If an Indian child, who is a ward of a tribal court or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings as recognized in Section 1911 of Title 25 of the United States Code or reassumed exclusive jurisdiction over Indian child custody proceedings pursuant to Section 1918 of Title 25 of the United States Code, has been removed by a state or local authority from the custody of his or her parents or Indian custodian, the state or local authority shall provide notice of the removal to the tribe no later than the next working day following the removal and shall provide all relevant documentation to the tribe regarding the removal and the child's identity. If the tribe determines that the child is an Indian child, the state or local authority shall transfer the child custody proceeding to the tribe within 24 hours after receipt of written notice from the tribe of that determination.

(b) In the case of an Indian child who is not domiciled or residing within a reservation of an Indian tribe or who resides or

1 is domiciled within a reservation of an Indian tribe that does not
2 have exclusive jurisdiction over child custody proceedings
3 pursuant to Section 1911 or 1918 of Title 25 of the United States
4 Code, the court shall transfer the proceeding to the jurisdiction of
5 the child's tribe upon petition of either parent, the Indian
6 custodian, if any, or the child's tribe, unless the court finds good
7 cause not to transfer. The court shall dismiss the proceeding or
8 terminate jurisdiction only after receiving proof that the tribal
9 court has accepted the transfer *of jurisdiction and established a*
10 *plan for the transfer of physical custody of the child.*

11 (c) (1) If a petition to transfer proceedings as described in
12 subdivision (b) is filed, the court shall find good cause to deny
13 the petition if one or more of the following circumstances are
14 shown to exist:

15 (A) One or both of the child's parents object to the transfer.

16 (B) The child's tribe does not have a "tribal court" as defined
17 in Section 1910 of Title 25 of the United States Code.

18 (C) The tribal court of the child's tribe declines the transfer.

19 (2) Good cause not to transfer the proceeding may exist if:

20 (A) The evidence necessary to decide the case cannot be
21 presented in the tribal court without undue hardship to the parties
22 or the witnesses, and the tribal court is unable to mitigate the
23 hardship by making arrangements to receive and consider the
24 evidence or testimony by use of remote communication, by
25 hearing the evidence or testimony at a location convenient to the
26 parties or witnesses, or by use of other means permitted in the
27 tribal court's rules of evidence or discovery.

28 (B) The proceeding was at an advanced stage when the
29 petition to transfer was received and the petitioner did not file the
30 petition within a reasonable time after receiving notice of the
31 proceeding, provided the notice complied with Section 224.2. It
32 shall ~~not~~ *not, in and of itself, necessarily* be considered an
33 unreasonable delay for a party to wait until reunification efforts
34 have failed and reunification services have been terminated
35 before filing a petition to transfer.

36 (C) *The Indian child is over 12 years of age and objects to the*
37 *transfer.*

38 (D) *The parents of the child over five years of age are not*
39 *available and the child has had little or no contact with the*
40 *child's tribe or members of the child's tribe.*

1 (3) Socioeconomic conditions and the perceived adequacy of
2 tribal social services or judicial systems may not be considered in
3 a determination that good cause exists.

4 (4) The burden of establishing good cause to the contrary shall
5 be on the party opposing the transfer. If the court believes, or any
6 party asserts, that good cause to the contrary exists, the reasons
7 for that belief or assertion shall be stated in writing and made
8 available to all parties who are petitioning for the transfer, and
9 the petitioner shall have the opportunity to provide information
10 or evidence in rebuttal of the belief or assertion.

11 (5) Nothing in this section or Section 1911 or 1918 of Title 25
12 of the United States Code shall be construed as requiring a tribe
13 to petition the Secretary of the Interior to reassume *exclusive*
14 jurisdiction pursuant to Section 1918 of Title 25 of the United
15 States Code prior to exercising jurisdiction over a proceeding
16 transferred under subdivision (b).

17 (d) An Indian child's domicile or place of residence is
18 determined by that of the parent, guardian, or Indian custodian
19 with whom the child maintained his or her primary place of
20 abode at the time the Indian child custody proceedings were
21 initiated.

22 (e) If any petitioner in an Indian child custody proceeding has
23 improperly removed the child from the custody of the parent or
24 Indian custodian or has improperly retained custody after a visit
25 or other temporary relinquishment of custody, the court shall
26 decline jurisdiction over the petition and shall immediately return
27 the child to his or her parent or Indian custodian, unless returning
28 the child to the parent or Indian custodian would subject the child
29 to a substantial and immediate danger or threat of danger.

30 (f) Nothing in this section shall be construed to prevent the
31 emergency removal of an Indian child who is a ward of a tribal
32 court or resides or is domiciled within a reservation of an Indian
33 tribe, but is temporarily located off the reservation, from a parent
34 or Indian custodian or the emergency placement of the child in a
35 foster home or institution in order to prevent imminent physical
36 damage or harm to the child. The state or local authority shall
37 ensure that the emergency removal or placement terminates
38 immediately when the removal or placement is no longer
39 necessary to prevent imminent physical damage or harm to the
40 child and shall expeditiously initiate an Indian child custody

1 proceeding, transfer the child to the jurisdiction of the Indian
2 child's tribe, or restore the child to the parent or Indian custodian,
3 as may be appropriate.

4 ~~SEC. 48.~~

5 *SEC. 45.* Section 317 of the Welfare and Institutions Code is
6 amended to read:

7 317. (a) (1) When it appears to the court that a ~~parent,~~
8 ~~Indian custodian,~~ parent or guardian of the child desires counsel
9 but is presently financially unable to afford and cannot for that
10 reason employ counsel, the court may appoint counsel as
11 provided in this section.

12 (2) *When it appears to the court that a parent or Indian*
13 *custodian in an Indian child custody proceeding desires counsel*
14 *but is presently unable to afford and cannot for that reason*
15 *employ counsel, the provisions of subsection (b) of Section 1912*
16 *of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and*
17 *Section 23.13 of Title 25 of the Code of Federal Regulations are*
18 *applicable.*

19 (b) When it appears to the court that a parent, ~~Indian~~
20 ~~custodian,~~ or guardian of the child is presently financially unable
21 to afford and cannot for that reason employ counsel, and the
22 child has been placed in out-of-home care, or the petitioning
23 agency is recommending that the child be placed in out-of-home
24 care, the court shall appoint counsel, unless the court finds that
25 the ~~parent, Indian custodian,~~ parent or guardian has made a
26 knowing and intelligent waiver of counsel as provided in this
27 section.

28 (c) Where a child is not represented by counsel, the court shall
29 appoint counsel for the child unless the court finds that the child
30 would not benefit from the appointment of counsel. The court
31 shall state on the record its reasons for that finding. A primary
32 responsibility of any counsel appointed to represent a child
33 pursuant to this section shall be to advocate for the protection,
34 safety, and physical and emotional well-being of the child.
35 Counsel for the child may be a district attorney, public defender,
36 or other member of the bar, provided that the counsel does not
37 represent another party or county agency whose interests conflict
38 with the child's interests. The fact that the district attorney
39 represents the child in a proceeding pursuant to Section 300 as
40 well as conducts a criminal investigation or files a criminal

1 complaint or information arising from the same or reasonably
2 related set of facts as the proceeding pursuant to Section 300 is
3 not in and of itself a conflict of interest. The court may fix the
4 compensation for the services of appointed counsel. The
5 appointed counsel shall have a caseload and training that assures
6 adequate representation of the child. The Judicial Council shall
7 promulgate rules of court that establish caseload standards,
8 training requirements, and guidelines for appointed counsel for
9 children and shall adopt rules as required by Section 326.5 no
10 later than July 1, 2001.

11 (d) The counsel appointed by the court shall represent the
12 parent, guardian, ~~Indian custodian~~, or child at the detention
13 hearing and at all subsequent proceedings before the juvenile
14 court. Counsel shall continue to represent the parent, guardian,
15 ~~Indian custodian~~, or child unless relieved by the court upon the
16 substitution of other counsel or for cause. The representation
17 shall include representing the parent, guardian, ~~Indian custodian~~,
18 or the child in termination proceedings and in those proceedings
19 relating to the institution or setting aside of a legal guardianship.

20 (e) The counsel for the child shall be charged in general with
21 the representation of the child's interests. To that end, the
22 counsel shall make or cause to have made any further
23 investigations that he or she deems in good faith to be reasonably
24 necessary to ascertain the facts, including the interviewing of
25 witnesses, and he or she shall examine and cross-examine
26 witnesses in both the adjudicatory and dispositional hearings. He
27 or she may also introduce and examine his or her own witnesses,
28 make recommendations to the court concerning the child's
29 welfare, and participate further in the proceedings to the degree
30 necessary to adequately represent the child. In any case in which
31 the child is four years of age or older, counsel shall interview the
32 child to determine the child's wishes and to assess the child's
33 well-being, and shall advise the court of the child's wishes.
34 Counsel for the child shall not advocate for the return of the child
35 if, to the best of his or her knowledge, that return conflicts with
36 the protection and safety of the child. In addition counsel shall
37 investigate the interests of the child beyond the scope of the
38 juvenile proceeding and report to the court other interests of the
39 child that may need to be protected by the institution of other
40 administrative or judicial proceedings. The attorney representing

1 a child in a dependency proceeding is not required to assume the
2 responsibilities of a social worker and is not expected to provide
3 nonlegal services to the child. The court shall take whatever
4 appropriate action is necessary to fully protect the interests of the
5 child.

6 (f) Either the child or the counsel for the child, with the
7 informed consent of the child if the child is found by the court to
8 be of sufficient age and maturity to so consent, may invoke the
9 psychotherapist-client privilege, physician-patient privilege, and
10 clergyman-penitent privilege; and if the child invokes the
11 privilege, counsel may not waive it, but if counsel invokes the
12 privilege, the child may waive it. Counsel shall be holder of these
13 privileges if the child is found by the court not to be of sufficient
14 age and maturity to so consent. For the sole purpose of fulfilling
15 his or her obligation to provide legal representation of the child,
16 counsel for a child shall have access to all records with regard to
17 the child maintained by a health care facility, as defined in
18 Section 1545 of the Penal Code, health care providers, as defined
19 in Section 6146 of the Business and Professions Code, a
20 physician and surgeon or other health practitioner as defined in
21 Section 11165.8 of the Penal Code or a child care custodian, as
22 defined in Section 11165.7 of the Penal Code. Notwithstanding
23 any other law, counsel shall be given access to all records
24 relevant to the case which are maintained by state or local public
25 agencies. All information requested from a child protective
26 agency regarding a child who is in protective custody, or from a
27 child's guardian ad litem, shall be provided to the child's counsel
28 within 30 days of the request.

29 (g) In a county of the third class, if counsel is to be provided to
30 a child at county expense other than by counsel for the agency,
31 the court shall first utilize the services of the public defender
32 prior to appointing private counsel, to provide legal counsel.
33 Nothing in this subdivision shall be construed to require the
34 appointment of the public defender in any case in which the
35 public defender has a conflict of interest. In the interest of justice,
36 a court may depart from that portion of the procedure requiring
37 appointment of the public defender after making a finding of
38 good cause and stating the reasons therefor on the record.

39 (h) In a county of the third class, if counsel is to be appointed
40 for a ~~parent, Indian custodian,~~ *parent* or guardian at county

1 expense, the court shall first utilize the services of the alternate
2 public defender, prior to appointing private counsel, to provide
3 legal counsel. Nothing in this subdivision shall be construed to
4 require the appointment of the alternate public defender in any
5 case in which the public defender has a conflict of interest. In the
6 interest of justice, a court may depart from that portion of the
7 procedure requiring appointment of the alternate public defender
8 after making a finding of good cause and stating the reasons
9 therefor on the record.

10 ~~SEC. 49.~~

11 ~~SEC. 46.~~ Section 360.6 of the Welfare and Institutions Code
12 is repealed.

13 ~~SEC. 50.~~ Section 360.8 is added to the Welfare and
14 Institutions Code, to read:

15 ~~360.8. (a) When a proceeding under this chapter involves a~~
16 ~~child who has Indian ancestry but who is not an Indian child, and~~
17 ~~the proceeding would otherwise be an Indian child custody~~
18 ~~proceeding, the court may recognize the tribe from which the~~
19 ~~child is descended and grant standing to participate as a party in~~
20 ~~the proceeding upon the request of a tribe.~~

21 ~~(b) If the court recognizes the child's tribe and grants standing~~
22 ~~to the tribe to participate as a party to the proceeding, the tribe~~
23 ~~may do all of the following:~~

24 ~~(1) Be present at the hearing.~~

25 ~~(2) Be represented by retained counsel or a representative of~~
26 ~~the tribe designated by the tribe to intervene on behalf of the~~
27 ~~tribe, provided that when the tribe appears as a party by a~~
28 ~~representative of the tribe, the name of the representative and a~~
29 ~~statement of authorization for that individual to appear as the~~
30 ~~tribe shall be submitted to the court in the form of a tribal~~
31 ~~resolution or other document evidencing an official act of the~~
32 ~~tribe.~~

33 ~~(3) Address the court.~~

34 ~~(4) Receive notice of hearings.~~

35 ~~(5) Examine all court documents relating to the proceeding.~~

36 ~~(6) Present evidence.~~

37 ~~(7) Submit written reports and recommendations to the court.~~

38 ~~(8) Perform other duties and responsibilities as requested or~~
39 ~~approved by the court.~~

1 ~~(e) If more than one tribe requests intervention under~~
2 ~~subdivision (a), the court may limit intervention to the tribe with~~
3 ~~which the child has the most significant contacts, as determined~~
4 ~~in accordance with paragraph (2) of subdivision (d) of Section~~
5 ~~170 of the Family Code.~~

6 ~~(d) This section is intended to assist the court in making~~
7 ~~decisions that are in the best interest of the child involved by~~
8 ~~permitting a tribe, in the circumstances set out in subdivision (a),~~
9 ~~to inform the court and parties to the proceeding about placement~~
10 ~~options for the child within the child's extended family or the~~
11 ~~tribal community, services and programs available to the child~~
12 ~~and the child's parents as Indians, and other unique interests the~~
13 ~~child or the child's parents may have as Indians. This section~~
14 ~~shall not be construed to make the Indian Child Welfare Act (25~~
15 ~~U.S.C. Sec. 1901 et seq.), or any state law implementing the~~
16 ~~Indian Child Welfare Act, applicable to the proceedings, or to~~
17 ~~limit the court's discretion to permit other interested persons to~~
18 ~~participate in these or any other proceedings.~~

19 ~~SEC. 51.~~

20 *SEC. 47.* Section 361 of the Welfare and Institutions Code is
21 amended to read:

22 361. (a) In all cases in which a minor is adjudged a
23 dependent child of the court on the ground that the minor is a
24 person described by Section 300, the court may limit the control
25 to be exercised over the dependent child by any parent or
26 guardian and shall by its order clearly and specifically set forth
27 all those limitations. Any limitation on the right of the parent or
28 guardian to make educational decisions for the child shall be
29 specifically addressed in the court order. The limitations may not
30 exceed those necessary to protect the child. If the court
31 specifically limits the right of the parent or guardian to make
32 educational decisions for the child, the court shall at the same
33 time appoint a responsible adult to make educational decisions
34 for the child until one of the following occurs:

35 (1) The minor reaches 18 years of age, unless the child
36 chooses not to make educational decisions for himself or herself,
37 or is deemed by the court to be incompetent.

38 (2) Another responsible adult is appointed to make educational
39 decisions for the minor pursuant to this section.

1 (3) The right of the parent or guardian to make educational
2 decisions for the minor is fully restored.

3 (4) A successor guardian or conservator is appointed.

4 (5) The child is placed into a planned permanent living
5 arrangement pursuant to paragraph (3) of subdivision (g) of
6 Section 366.21, Section 366.22, or Section 366.26, at which time
7 the foster parent, relative caretaker, or nonrelative extended
8 family member as defined in Section 362.7 has the right to
9 represent the child in educational matters pursuant to Section
10 56055 of the Education Code.

11 An individual who would have a conflict of interest in
12 representing the child may not be appointed to make educational
13 decisions. For purposes of this section, “an individual who would
14 have a conflict of interest,” means a person having any interests
15 that might restrict or bias his or her ability to make educational
16 decisions, including, but not limited to, those conflicts of interest
17 prohibited by Section 1126 of the Government Code, and the
18 receipt of compensation or attorneys’ fees for the provision of
19 services pursuant to this section. A foster parent may not be
20 deemed to have a conflict of interest solely because he or she
21 receives compensation for the provision of services pursuant to
22 this section.

23 If the court is unable to appoint a responsible adult to make
24 educational decisions for the child and paragraphs (1) to (5),
25 inclusive, do not apply, and the child has either been referred to
26 the local educational agency for special education and related
27 services, or has a valid individualized education program, the
28 court shall refer the child to the local educational agency for
29 appointment of a surrogate parent pursuant to Section 7579.5 of
30 the Government Code.

31 All educational and school placement decisions shall seek to
32 ensure that the child is in the least restrictive educational
33 programs and has access to the academic resources, services, and
34 extracurricular and enrichment activities that are available to all
35 pupils. In all instances, educational and school placement
36 decisions shall be based on the best interests of the child.

37 (b) Subdivision (a) does not limit the ability of a parent to
38 voluntarily relinquish his or her child to the State Department of
39 Social Services or to a licensed county adoption agency at any

1 time while the child is a dependent child of the juvenile court, if
2 the department or agency is willing to accept the relinquishment.

3 (c) A dependent child may not be taken from the physical
4 custody of his or her parents or guardian or guardians with whom
5 the child resides at the time the petition was initiated, unless the
6 juvenile court finds clear and convincing evidence of any of the
7 following circumstances listed in paragraphs (1) to (5), inclusive,
8 and, in an Indian child custody proceeding, paragraph (6):

9 (1) There is a substantial danger to the physical health, safety,
10 protection, or physical or emotional well-being of the minor or
11 would be if the minor were returned home, and there are no
12 reasonable means by which the minor's physical health can be
13 protected without removing the minor from the minor's parents'
14 or guardians' physical custody. The fact that a minor has been
15 adjudicated a dependent child of the court pursuant to
16 subdivision (e) of Section 300 shall constitute prima facie
17 evidence that the minor cannot be safely left in the custody of the
18 parent or guardian with whom the minor resided at the time of
19 injury. The court shall consider, as a reasonable means to protect
20 the minor, the option of removing an offending parent or
21 guardian from the home. The court shall also consider, as a
22 reasonable means to protect the minor, allowing a nonoffending
23 parent or guardian to retain custody as long as that parent or
24 guardian presents a plan acceptable to the court demonstrating
25 that he or she will be able to protect the child from future harm.

26 (2) The parent or guardian of the minor is unwilling to have
27 physical custody of the minor, and the parent or guardian has
28 been notified that if the minor remains out of their physical
29 custody for the period specified in Section 366.26, the minor may
30 be declared permanently free from their custody and control.

31 (3) The minor is suffering severe emotional damage, as
32 indicated by extreme anxiety, depression, withdrawal, or
33 untoward aggressive behavior toward himself or herself or
34 others, and there are no reasonable means by which the minor's
35 emotional health may be protected without removing the minor
36 from the physical custody of his or her parent or guardian.

37 (4) The minor or a sibling of the minor has been sexually
38 abused, or is deemed to be at substantial risk of being sexually
39 abused, by a parent, guardian, or member of his or her household,
40 or other person known to his or her parent, and there are no

1 reasonable means by which the minor can be protected from
2 further sexual abuse or a substantial risk of sexual abuse without
3 removing the minor from his or her parent or guardian, or the
4 minor does not wish to return to his or her parent or guardian.

5 (5) The minor has been left without any provision for his or
6 her support, or a parent who has been incarcerated or
7 institutionalized cannot arrange for the care of the minor, or a
8 relative or other adult custodian with whom the child has been
9 left by the parent is unwilling or unable to provide care or
10 support for the child and the whereabouts of the parent is
11 unknown and reasonable efforts to locate him or her have been
12 unsuccessful.

13 (6) In an Indian child custody proceeding, continued custody
14 of the child by the parent or Indian custodian is likely to result in
15 serious emotional or physical damage to the child, and that
16 finding is supported by testimony of a “qualified expert
17 witness” as described in Section 224.6.

18 (A) Stipulation by the parent, Indian custodian, or the Indian
19 child’s tribe, or failure to object, may waive the requirement of
20 producing evidence of the likelihood of serious damage only if
21 the court is satisfied that the party has been fully advised of the
22 requirements of the Indian Child Welfare Act (25 U.S.C. Sec.
23 1901 et seq.), and has knowingly, intelligently, and voluntarily
24 waived them.

25 (B) Failure to meet non-Indian family and child-rearing
26 community standards, or the existence of other behavior or
27 conditions that meet the removal standards of this section, will
28 not support an order for placement in the absence of the finding
29 in this paragraph.

30 (d) The court shall make a determination as to whether
31 reasonable efforts were made to prevent or to eliminate the need
32 for removal of the minor from his or her home or, if the minor is
33 removed for one of the reasons stated in paragraph (5) of
34 subdivision (c), whether it was reasonable under the
35 circumstances not to make any of those efforts, or, in the case of
36 an Indian child custody proceeding, whether active efforts as
37 required in Section 361.7 were made and that these efforts have
38 proved unsuccessful. The court shall state the facts on which the
39 decision to remove the minor is based.

(e) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parent or guardian and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

~~SEC. 52.~~

SEC. 48. Section 361.31 is added to the Welfare and Institutions Code, to read:

361.31. (a) In any case in which an Indian child is removed from the physical custody of his or her parents or Indian custodian pursuant to Section 361, the child's placement shall comply with this section.

(b) ~~Any emergency removal, foster care, foster care or guardianship placement of an Indian child, or any emergency removal of a child who is known to be an Indian child~~ shall be in the least restrictive setting which most approximates a family situation and in which the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to the child's home, taking into account any special needs of the child. Preference shall be given to the child's placement with one of the following, in descending priority order:

(1) A member of the child's extended family, as defined in Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(2) A foster home licensed, approved, or specified by the child's tribe.

(3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(4) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) In any adoptive placement of an Indian child, preference shall be given to a placement with one of the following, in descending priority order:

1 (1) A member of the child's extended family, as defined in
2 Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec.
3 1901 et seq.).

4 (2) Other members of the child's tribe.

5 (3) Another Indian family.

6 (d) Notwithstanding the placement preferences listed in
7 subdivisions (b) and (c), if a different order of placement
8 preference is established by the child's tribe, the court or agency
9 effecting the placement shall follow the order of preference
10 established by the tribe, so long as the placement is the least
11 restrictive setting appropriate to the particular needs of the child
12 as provided in subdivision (b).

13 (e) Where appropriate, the placement preference of the Indian
14 child, when of sufficient age, or parent shall be considered. In
15 applying the preferences, a consenting parent's request for
16 anonymity shall also be given weight by the court or agency
17 effecting the placement. ~~Unless there is clear and convincing~~
18 ~~evidence that placement within the order of preference applicable~~
19 ~~under subdivision (b), (c), or (d) would be harmful to the Indian~~
20 ~~child, consideration of the preference of the Indian child or~~
21 ~~parent or a parent's request for anonymity shall not be a basis for~~
22 ~~placing an Indian child outside of the applicable order of~~
23 ~~preference. The burden of establishing harm to the Indian child~~
24 ~~shall be on the party requesting a variation or deviation from the~~
25 ~~preferences. effecting the placement.~~

26 (f) The prevailing social and cultural standards of the Indian
27 community in which the parent or extended family members of
28 an Indian child reside, or with which the parent or extended
29 family members maintain social and cultural ties, or the
30 prevailing social and cultural standards of the Indian child's tribe
31 shall be applied in meeting the placement preferences under this
32 section. A determination of the applicable prevailing social and
33 cultural standards may be confirmed by the Indian child's tribe or
34 by the testimony or other documented support of a qualified
35 expert witness, as defined in subdivision (c) of Section 224.6,
36 who is knowledgeable regarding the social and cultural standards
37 of the Indian child's tribe.

38 (g) Any person or court involved in the placement of an Indian
39 child shall use the services of the Indian child's tribe, whenever
40 available through the tribe, in seeking to secure placement within

1 the order of placement preference established in this section and
2 in the supervision of the placement.

3 (h) The court may determine that good cause exists not to
4 follow placement preferences applicable under subdivision (b),
5 (c), or (d) in accordance with subdivision (e) ~~or when there is~~
6 ~~clear and convincing evidence of one of the following:~~

7 ~~(1) A diligent search has been completed for families meeting~~
8 ~~the preference criteria and no suitable placement is available.~~

9 ~~(2) The extraordinary physical or emotional needs of the~~
10 ~~Indian child as established by a qualified expert witness.~~

11 (i) When no preferred placement under subdivision (b), (c), or
12 (d) is available, active efforts shall be made to place the child
13 with a family committed to enabling the child to have extended
14 family visitation and participation in the cultural and ceremonial
15 events of the child's tribe.

16 (j) The burden of establishing the existence of good cause not
17 to follow placement preferences applicable under subdivision (b),
18 (c), or (d) shall be on the party requesting that the preferences not
19 be followed.

20 (k) A record of each foster care placement or adoptive
21 placement of an Indian child shall be maintained in perpetuity by
22 the State Department of Social Services. The record shall
23 document the active efforts to comply with the applicable order
24 of preference specified in this section.

25 ~~SEC. 53. Section 361.4 of the Welfare and Institutions Code~~
26 ~~is amended to read:~~

27 ~~361.4. (a) Prior to placing a child in the home of a relative, or~~
28 ~~the home of any prospective guardian or other person who is not~~
29 ~~a licensed or certified foster parent, the county social worker~~
30 ~~shall visit the home to ascertain the appropriateness of the~~
31 ~~placement.~~

32 ~~(b) Whenever a child may be placed in the home of a relative,~~
33 ~~or the home of any prospective guardian or other person who is~~
34 ~~not a licensed or certified foster parent, the court or county social~~
35 ~~worker placing the child shall cause a state and federal level~~
36 ~~criminal records check to be conducted by an appropriate~~
37 ~~governmental agency through the California Law Enforcement~~
38 ~~Telecommunications System (CLETS) pursuant to Section~~
39 ~~16504.5. The criminal records check shall be conducted with~~
40 ~~regard to all persons over the age of 18 years living in the home,~~

1 and on any other person over the age of 18 years, other than
2 professionals providing professional services to the child, known
3 to the placing entity who may have significant contact with the
4 child, including any person who has a familial or intimate
5 relationship with any person living in the home. A criminal
6 records check may be conducted pursuant to this section on any
7 person over the age of 14 years living in the home who the
8 county social worker believes may have a criminal record.
9 Within five judicial days following the criminal records check
10 conducted through the California Law Enforcement
11 Telecommunications System, the social worker shall ensure that
12 a fingerprint clearance check of the relative and any other person
13 whose criminal record was obtained pursuant to this subdivision
14 is initiated through the Department of Justice to ensure the
15 accuracy of the criminal records check conducted through the
16 California Law Enforcement Telecommunications System and
17 shall review the results of any criminal records check to assess
18 the safety of the home. The Department of Justice shall forward
19 fingerprint requests for federal level criminal history information
20 to the Federal Bureau of Investigation pursuant to this section.

21 (c) Whenever a child may be placed in the home of a relative,
22 or a prospective guardian or other person who is not a licensed or
23 certified foster parent, the county social worker shall cause a
24 check of the Child Abuse Index pursuant to subdivision (a) of
25 Section 11170 of the Penal Code to be requested from the
26 Department of Justice. The Child Abuse Index check shall be
27 conducted on all persons over the age of 18 years living in the
28 home.

29 (d) (1) If the criminal records check indicates that the person
30 has no criminal record, the county social worker and court may
31 consider the home of the relative, prospective guardian, or other
32 person who is not a licensed or certified foster parent for
33 placement of a child.

34 (2) If the criminal records check indicates that the person has
35 been convicted of a crime that would preclude licensure under
36 Section 1522 of the Health and Safety Code, the child may not be
37 placed in the home, unless a criminal records exemption has been
38 granted by the county, based on substantial and convincing
39 evidence to support a reasonable belief that the person with the
40 criminal conviction is of such good character as to justify the

1 placement and not present a risk of harm to the child pursuant to
2 paragraph (3):

3 ~~(3) (A) A county may issue a criminal records exemption only~~
4 ~~if that county has been granted permission by the Director of~~
5 ~~Social Services to issue criminal records exemptions. The county~~
6 ~~may file a request with the Director of Social Services seeking~~
7 ~~permission for the county to establish a procedure to evaluate and~~
8 ~~grant appropriate individual criminal records exemptions for~~
9 ~~persons described in subdivision (b). The director shall grant or~~
10 ~~deny the county's request within 14 days of receipt. The county~~
11 ~~shall evaluate individual criminal records in accordance with the~~
12 ~~standards and limitations set forth in paragraph (1) of subdivision~~
13 ~~(g) of Section 1522 of the Health and Safety Code, and in no~~
14 ~~event shall the county place a child in the home of a person who~~
15 ~~is ineligible for an exemption under that provision.~~

16 ~~(B) The department shall monitor county implementation of~~
17 ~~the authority to grant an exemption under this paragraph to~~
18 ~~ensure that the county evaluates individual criminal records and~~
19 ~~allows or disallows placements according to the standards set~~
20 ~~forth in paragraph (1) of subdivision (g) of Section 1522 of the~~
21 ~~Health and Safety Code.~~

22 ~~(4) The department shall conduct an evaluation of the~~
23 ~~implementation of paragraph (3) through random sampling of~~
24 ~~county exemption decisions.~~

25 ~~(5) The State Department of Social Services shall not evaluate~~
26 ~~or grant criminal records exemption requests for persons~~
27 ~~described in subdivision (b), unless the exemption request is~~
28 ~~made by an Indian tribe pursuant to subdivision (f).~~

29 ~~(6) If a county has not requested, or has not been granted,~~
30 ~~permission by the State Department of Social Services to~~
31 ~~establish a procedure to evaluate and grant criminal records~~
32 ~~exemptions, the county may not place a child into the home of a~~
33 ~~person described in subdivision (b) if any person residing in the~~
34 ~~home has been convicted of a crime other than a minor traffic~~
35 ~~violation, except as provided in subdivision (f).~~

36 ~~(c) Nothing in this section shall preclude a county from~~
37 ~~conducting a criminal background check that the county is~~
38 ~~otherwise authorized to conduct using fingerprints.~~

39 ~~(f) Upon request from an Indian tribe, the State Department of~~
40 ~~Social Services shall evaluate an exemption request, if needed, to~~

~~1 allow placement into an Indian home that the tribe has designated
2 for placement under the Indian Child Welfare Act (25 U.S.C.
3 Sec. 1901 et seq.) that would otherwise be barred under this
4 section. However, if the county with jurisdiction over the child
5 that is the subject of the tribe's request has established an
6 approved procedure pursuant to paragraph (3) of subdivision (d),
7 the tribe may request that the county evaluate the exemption
8 request. Once a tribe has elected to have the exemption request
9 reviewed by either the State Department of Social Services or the
10 county, the exemption decision may only be made by that entity.
11 Nothing in this subdivision limits the duty of a county social
12 worker to evaluate the home for placement or to gather
13 information needed to evaluate an exemption request.~~

~~14 SEC. 54.~~

~~15 SEC. 49.~~ Section 361.7 is added to the Welfare and
16 Institutions Code, to read:

17 361.7. (a) Notwithstanding Section 361.5, a party seeking an
18 involuntary foster care placement of, or termination of parental
19 rights over, an Indian child shall provide evidence to the court
20 that active efforts have been made to provide remedial services
21 and rehabilitative programs designed to prevent the breakup of
22 the Indian family and that these efforts have proved unsuccessful.

23 (b) What constitutes active efforts shall be assessed on a
24 case-by-case basis. The active efforts shall be made in a manner
25 that takes into account the prevailing social and cultural values,
26 conditions, and way of life of the Indian child's tribe. Active
27 efforts shall utilize the available resources of the Indian child's
28 extended family, tribe, tribal and other Indian social service
29 agencies, and individual Indian caregiver service providers.
30 Active efforts may include, but are not limited to, the following:

31 (1) A request to the Indian child's tribe to convene traditional
32 and customary support and resolution actions or services.

33 (2) Identification and participation of tribally designated
34 representatives at the earliest point.

35 (3) Consultation with extended family members to identify
36 family structure and family support services that may be
37 provided by extended family members.

38 (4) Frequent visitation in the Indian child's home and the
39 homes of the child's extended family members.

1 (5) Exhaustion of all tribally appropriate family preservation
2 alternatives.

3 (6) Identification and provision of information to the child's
4 family concerning community resources that may be able to offer
5 housing, financial, and transportation assistance and actively
6 assisting the family in accessing the community resources.

7 (c) No foster care placement or guardianship may be ordered
8 in the proceeding in the absence of a determination, supported by
9 clear and convincing evidence, including testimony of a qualified
10 expert witness, as defined in Section 224.6, that the continued
11 custody of the child by the parent or Indian custodian is likely to
12 result in serious emotional or physical damage to the child.

13 ~~SEC. 55.~~

14 *SEC. 50.* Section 366 of the Welfare and Institutions Code is
15 amended to read:

16 366. (a) (1) The status of every dependent child in foster
17 care shall be reviewed periodically as determined by the court
18 but no less frequently than once every six months, as calculated
19 from the date of the original dispositional hearing, until the
20 hearing described in Section 366.26 is completed. The court shall
21 consider the safety of the child and shall determine all of the
22 following:

23 (A) The continuing necessity for and appropriateness of the
24 placement.

25 (B) The extent of the agency's compliance with the case plan
26 in making reasonable efforts, or, in the case of an Indian child,
27 active efforts as described in Section 361.7, to return the child to
28 a safe home and to complete any steps necessary to finalize the
29 permanent placement of the child, including efforts to maintain
30 relationships between a child who is 10 years of age or older who
31 is placed in a group home for six months or longer from the date
32 the child entered foster care, and individuals other than the
33 child's siblings who are important to the child, consistent with
34 the child's best interests.

35 (C) Whether there should be any limitation on the right of the
36 parent or guardian to make educational decisions for the child.
37 That limitation shall be specifically addressed in the court order
38 and may not exceed those necessary to protect the child.
39 Whenever the court specifically limits the right of the parent or
40 guardian to make educational decisions for the child, the court

1 shall at the same time appoint a responsible adult to make
2 educational decisions for the child pursuant to Section 361.

3 (D) (i) Whether the child has other siblings under the court's
4 jurisdiction, and, if any siblings exist, all of the following:

5 (I) The nature of the relationship between the child and his or
6 her siblings.

7 (II) The appropriateness of developing or maintaining the
8 sibling relationships pursuant to Section 16002.

9 (III) If the siblings are not placed together in the same home,
10 why the siblings are not placed together and what efforts are
11 being made to place the siblings together, or why those efforts
12 are not appropriate.

13 (IV) If the siblings are not placed together, the frequency and
14 nature of the visits between siblings.

15 (V) The impact of the sibling relationships on the child's
16 placement and planning for legal permanence.

17 (VI) The continuing need to suspend sibling interaction, if
18 applicable, pursuant to subdivision (c) of Section 16002.

19 (ii) The factors the court may consider in making a
20 determination regarding the nature of the child's sibling
21 relationships may include, but are not limited to, whether the
22 siblings were raised together in the same home, whether the
23 siblings have shared significant common experiences or have
24 existing close and strong bonds, whether either sibling expresses
25 a desire to visit or live with his or her sibling, as applicable, and
26 whether ongoing contact is in the child's best emotional interests.

27 (E) The extent of progress which has been made toward
28 alleviating or mitigating the causes necessitating placement in
29 foster care.

30 (2) The court shall project a likely date by which the child may
31 be returned to and safely maintained in the home or placed for
32 adoption, legal guardianship, or in another planned permanent
33 living arrangement.

34 (b) Subsequent to the hearing, periodic reviews of each child
35 in foster care shall be conducted pursuant to the requirements of
36 Sections 366.3 and 16503.

37 (c) If the child has been placed out of state, each review
38 described in subdivision (a) and any reviews conducted pursuant
39 to Sections 366.3 and 16503 shall also address whether the

1 out-of-state placement continues to be the most appropriate
2 placement selection and in the best interests of the child.

3 (d) A child may not be placed in an out-of-state group home,
4 or remain in an out-of-state group home, unless the group home
5 is in compliance with Section 7911.1 of the Family Code.

6 ~~SEC. 56.~~

7 *SEC. 51.* Section 366.26 of the Welfare and Institutions Code
8 is amended to read:

9 366.26. (a) This section applies to children who are adjudged
10 dependent children of the juvenile court pursuant to subdivision
11 (c) of Section 360. The procedures specified herein are the
12 exclusive procedures for conducting these hearings; Part 2
13 (commencing with Section 3020) of Division 8 of the Family
14 Code is not applicable to these proceedings. Section 8714.7 of
15 the Family Code is applicable and available to all dependent
16 children meeting the requirements of that section, if the
17 postadoption contact agreement has been entered into
18 voluntarily. For children who are adjudged dependent children of
19 the juvenile court pursuant to subdivision (c) of Section 360, this
20 section and Sections 8604, 8605, 8606, and 8700 of the Family
21 Code and Chapter 5 (commencing with Section 7660) of Part 3
22 of Division 12 of the Family Code specify the exclusive
23 procedures for permanently terminating parental rights with
24 regard to, or establishing legal guardianship of, the child while
25 the child is a dependent child of the juvenile court.

26 (b) At the hearing, that shall be held in juvenile court for all
27 children who are dependents of the juvenile court, the court, in
28 order to provide stable, permanent homes for these children, shall
29 review the report as specified in Section 361.5, 366.21, or
30 366.22, shall indicate that the court has read and considered it,
31 shall receive other evidence that the parties may present, and then
32 shall make findings and orders in the following order of
33 preference:

34 (1) Terminate the rights of the parent or parents and order that
35 the child be placed for adoption and, upon the filing of a petition
36 for adoption in the juvenile court, order that a hearing be set. The
37 court shall proceed with the adoption after the appellate rights of
38 the natural parents have been exhausted.

39 (2) On making a finding under paragraph (3) of subdivision
40 (c), identify adoption as the permanent placement goal and order

1 that efforts be made to locate an appropriate adoptive family for
2 the child within a period not to exceed 180 days.

3 (3) Appoint a legal guardian for the child and order that letters
4 of guardianship issue.

5 (4) Order that the child be placed in long-term foster care,
6 subject to the periodic review of the juvenile court under Section
7 366.3.

8 In choosing among the above alternatives the court shall
9 proceed pursuant to subdivision (c).

10 (c) (1) If the court determines, based on the assessment
11 provided as ordered under subdivision (i) of Section 366.21 or
12 subdivision (b) of Section 366.22, and any other relevant
13 evidence, by a clear and convincing standard, that it is likely the
14 child will be adopted, the court shall terminate parental rights and
15 order the child placed for adoption. The fact that the child is not
16 yet placed in a preadoptive home nor with a relative or foster
17 family who is prepared to adopt the child, shall not constitute a
18 basis for the court to conclude that it is not likely the child will
19 be adopted. A finding under subdivision (b) or paragraph (1) of
20 subdivision (e) of Section 361.5 that reunification services shall
21 not be offered, under subdivision (e) of Section 366.21 that the
22 whereabouts of a parent have been unknown for six months or
23 that the parent has failed to visit or contact the child for six
24 months or that the parent has been convicted of a felony
25 indicating parental unfitness, or, under Section 366.21 or 366.22,
26 that the court has continued to remove the child from the custody
27 of the parent or guardian and has terminated reunification
28 services, shall constitute a sufficient basis for termination of
29 parental rights unless the court finds a compelling reason for
30 determining that termination would be detrimental to the child
31 due to one or more of the following circumstances:

32 (A) ~~The parents, Indian custodians, or guardians~~ *parents* have
33 maintained regular visitation and contact with the child and the
34 child would benefit from continuing the relationship.

35 (B) A child 12 years of age or older objects to termination of
36 parental rights.

37 (C) The child is placed in a residential treatment facility,
38 adoption is unlikely or undesirable, and continuation of parental
39 rights will not prevent finding the child a permanent family

1 placement if the parents cannot resume custody when residential
2 care is no longer needed.

3 (D) The child is living with a ~~nonrelative foster parent~~
4 *relative, foster parent, or Indian custodian* who is unable or
5 unwilling to adopt the child because of exceptional
6 circumstances, that do not include an unwillingness to accept
7 legal or financial responsibility for the child, but who is willing
8 and capable of providing the child with a stable and permanent
9 environment and the removal of the child from the physical
10 custody of his or her ~~foster parent~~ *relative, foster parent, or*
11 *Indian custodian* would be detrimental to the emotional
12 well-being of the child. This subparagraph does not apply to any
13 child who is *living with a nonrelative and who is* either (i) under
14 six years of age or (ii) a member of a sibling group where at least
15 one child is under six years of age and the siblings are, or should
16 be, permanently placed together. *For purposes of an Indian*
17 *child, “relative” shall include an “extended family member” as*
18 *defined in the Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)).*

19 (E) There would be substantial interference with a child’s
20 sibling relationship, taking into consideration the nature and
21 extent of the relationship, including, but not limited to, whether
22 the child was raised with a sibling in the same home, whether the
23 child shared significant common experiences or has existing
24 close and strong bonds with a sibling, and whether ongoing
25 contact is in the child’s best interest, including the child’s
26 long-term emotional interest, as compared to the benefit of legal
27 permanence through adoption. ~~When a child’s removal and~~
28 ~~subsequent lack of contact with siblings has prevented the child~~
29 ~~from establishing or maintaining sibling relationships, the court~~
30 ~~may consider the potential benefit of establishing and~~
31 ~~maintaining sibling relationships when determining whether~~
32 ~~termination of parental rights would be detrimental to the child.~~

33 (F) ~~The child is living with a fit and willing relative who is~~
34 ~~capable of providing the child with a stable and permanent~~
35 ~~environment and the removal of the child from the physical~~
36 ~~custody of his or her relative would be detrimental to the~~
37 ~~emotional well-being of the child. “Relative” shall include an~~
38 ~~“extended family member” as defined in the Indian Child~~
39 ~~Welfare Act (25 U.S.C. Sec. 1903(2)).~~

40 (G)

1 (F) The child is an Indian child and there is a compelling
2 reason for determining that termination of parental rights would
3 not be in the best interest of the child, including, but not limited
4 to:

5 (i) Termination of parental rights would substantially interfere
6 with the child's connection to his or her tribal community or the
7 child's tribal membership rights.

8 (ii) The child's tribe has identified guardianship, long-term
9 foster care with a fit and willing relative, or another planned
10 permanent living arrangement for the child.

11 If the court finds that termination of parental rights would be
12 detrimental to the child pursuant to subparagraph (A), (B), (C),
13 (D), ~~(E), (F), or (G)~~, (E), or (F), it shall state its reasons in
14 writing or on the record.

15 (2) The court shall not terminate parental rights if:

16 (A) At each hearing at which the court was required to
17 consider reasonable efforts or services, the court has found that
18 reasonable efforts were not made or that reasonable services were
19 not offered or provided.

20 (B) In the case of an Indian child:

21 (i) At the hearing terminating parental rights, the court has
22 found that active efforts were not made as required in Section
23 361.7.

24 (ii) The court does not make a determination at the hearing
25 terminating parental rights, supported by evidence beyond a
26 reasonable doubt, including testimony of one or more "qualified
27 expert witnesses" as defined in Section 224.6, that the continued
28 custody of the child by the parent is likely to result in serious
29 emotional or physical damage to the child.

30 (3) If the court finds that termination of parental rights would
31 not be detrimental to the child pursuant to paragraph (1) and that
32 the child has a probability for adoption but is difficult to place for
33 adoption and there is no identified or available prospective
34 adoptive parent, the court may identify adoption as the
35 permanent placement goal and without terminating parental
36 rights, order that efforts be made to locate an appropriate
37 adoptive family for the child within a period not to exceed 180
38 days. During this 180-day period, the public agency responsible
39 for seeking adoptive parents for each child shall, to the extent
40 possible, ask each child who is 10 years of age or older who is

placed in a group home for six months or longer from the date the child entered foster care, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), ~~(E), (F), or (G)~~ *(E), or (F)* of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional

1 well-being of the child because the child has substantial
2 psychological ties to the relative caretaker or foster parents.

3 (C) The court shall also make an order for visitation with the
4 parents or guardians unless the court finds by a preponderance of
5 the evidence that the visitation would be detrimental to the
6 physical or emotional well-being of the child.

7 (5) If the court finds that the child should not be placed for
8 adoption, that legal guardianship shall not be established, and
9 that there are no suitable foster parents except exclusive-use
10 homes available to provide the child with a stable and permanent
11 environment, the court may order the care, custody, and control
12 of the child transferred from the county welfare department to a
13 licensed foster family agency. The court shall consider the
14 written recommendation of the county welfare director regarding
15 the suitability of the transfer. The transfer shall be subject to
16 further court orders.

17 The licensed foster family agency shall place the child in a
18 suitable licensed or exclusive-use home that has been certified by
19 the agency as meeting licensing standards. The licensed foster
20 family agency shall be responsible for supporting the child and
21 providing appropriate services to the child, including those
22 services ordered by the court. Responsibility for the support of
23 the child shall not, in and of itself, create liability on the part of
24 the foster family agency to third persons injured by the child.
25 Those children whose care, custody, and control are transferred
26 to a foster family agency shall not be eligible for foster care
27 maintenance payments or child welfare services, except for
28 emergency response services pursuant to Section 16504.

29 (d) The proceeding for the appointment of a guardian for a
30 child who is a dependent of the juvenile court shall be in the
31 juvenile court. If the court finds pursuant to this section that legal
32 guardianship is the appropriate permanent plan, it shall appoint
33 the legal guardian and issue letters of guardianship. The
34 assessment prepared pursuant to subdivision (g) of Section 361.5,
35 subdivision (i) of Section 366.21, and subdivision (b) of Section
36 366.22 shall be read and considered by the court prior to the
37 appointment, and this shall be reflected in the minutes of the
38 court. The person preparing the assessment may be called and
39 examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

1 (g) The court may continue the proceeding for not to exceed
2 30 days as necessary to appoint counsel, and to enable counsel to
3 become acquainted with the case.

4 (h) (1) At all proceedings under this section, the court shall
5 consider the wishes of the child and shall act in the best interests
6 of the child.

7 (2) In accordance with Section 349, the child shall be present
8 in court if the child or the child's counsel so requests or the court
9 so orders. If the child is 10 years of age or older and is not
10 present at a hearing held pursuant to this section, the court shall
11 determine whether the minor was properly notified of his or her
12 right to attend the hearing and inquire as to the reason why the
13 child is not present.

14 (3) (A) The testimony of the child may be taken in chambers
15 and outside the presence of the child's parent or parents, if the
16 child's parent or parents are represented by counsel, the counsel
17 is present, and any of the following circumstances exist:

18 (i) The court determines that testimony in chambers is
19 necessary to ensure truthful testimony.

20 (ii) The child is likely to be intimidated by a formal courtroom
21 setting.

22 (iii) The child is afraid to testify in front of his or her parent or
23 parents.

24 (B) After testimony in chambers, the parent or parents of the
25 child may elect to have the court reporter read back the testimony
26 or have the testimony summarized by counsel for the parent or
27 parents.

28 (C) The testimony of a child also may be taken in chambers
29 and outside the presence of the guardian or guardians of a child
30 under the circumstances specified in this subdivision.

31 (i) Any order of the court permanently terminating parental
32 rights under this section shall be conclusive and binding upon the
33 child, upon the parent or parents and upon all other persons who
34 have been served with citation by publication or otherwise as
35 provided in this chapter. After making the order, the court shall
36 have no power to set aside, change, or modify it, but nothing in
37 this section shall be construed to limit the right to appeal the
38 order.

39 (j) If the court, by order or judgment, declares the child free
40 from the custody and control of both parents, or one parent if the

1 other does not have custody and control, the court shall at the
2 same time order the child referred to the State Department of
3 Social Services or a licensed adoption agency for adoptive
4 placement by the agency. However, a petition for adoption may
5 not be granted until the appellate rights of the natural parents
6 have been exhausted. The State Department of Social Services or
7 licensed adoption agency shall be responsible for the custody and
8 supervision of the child and shall be entitled to the exclusive care
9 and control of the child at all times until a petition for adoption is
10 granted. With the consent of the agency, the court may appoint a
11 guardian of the child, who shall serve until the child is adopted.

12 (k) Notwithstanding any other provision of law, the
13 application of any person who, as a relative caretaker or foster
14 parent, has cared for a dependent child for whom the court has
15 approved a permanent plan for adoption, or who has been freed
16 for adoption, shall be given preference with respect to that child
17 over all other applications for adoptive placement if the agency
18 making the placement determines that the child has substantial
19 emotional ties to the relative caretaker or foster parent and
20 removal from the relative caretaker or foster parent would be
21 seriously detrimental to the child's emotional well-being.

22 As used in this subdivision, "preference" means that the
23 application shall be processed and, if satisfactory, the family
24 study shall be completed before the processing of the application
25 of any other person for the adoptive placement of the child.

26 (l) (1) An order by the court that a hearing pursuant to this
27 section be held is not appealable at any time unless all of the
28 following applies:

29 (A) A petition for extraordinary writ review was filed in a
30 timely manner.

31 (B) The petition substantively addressed the specific issues to
32 be challenged and supported that challenge by an adequate
33 record.

34 (C) The petition for extraordinary writ review was summarily
35 denied or otherwise not decided on the merits.

36 (2) Failure to file a petition for extraordinary writ review
37 within the period specified by rule, to substantively address the
38 specific issues challenged, or to support that challenge by an
39 adequate record shall preclude subsequent review by appeal of
40 the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

~~SEC. 57.~~

SEC. 52. Section 727.4 of the Welfare and Institutions Code is amended to read:

727.4. (a) (1) Notice of any hearing pursuant to Section 727, 727.2, or 727.3 shall be mailed by the probation officer to the minor, the minor's parent or guardian, any adult provider of care to the minor including, but not limited to, foster parents, relative caregivers, preadoptive parents, community care facility, or foster family agency, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by

1 the court, by first-class mail addressed to the last known address
2 of the person to be notified, or shall be personally served on
3 those persons, not earlier than 30 days nor later than 15 days
4 preceding the date of the hearing. The notice shall contain a
5 statement regarding the nature of the status review or
6 permanency planning hearing and any change in the custody or
7 status of the minor being recommended by the probation
8 department. The notice shall also include a statement informing
9 the foster parents, relative caregivers, or preadoptive parents that
10 he or she may attend all hearings or may submit any information
11 he or she deems relevant to the court in writing. The foster
12 parents, relative caregiver, and preadoptive parents are entitled to
13 notice and opportunity to be heard but need not be made parties
14 to the proceedings. Proof of notice shall be filed with the court.

15 (2) If the court or probation officer knows or has reason to
16 know that the minor is or may be an Indian child, any notice sent
17 under this section shall comply with the requirements of Section
18 224.2.

19 (b) At least 10 calendar days prior to each status review and
20 permanency planning hearing, after the hearing during which the
21 court orders that the care, custody and control of the minor to be
22 under the supervision of the probation officer for placement
23 pursuant to subdivision (a) of Section 727, the probation officer
24 shall file a social study report with the court, pursuant to the
25 requirements listed in Section 706.5.

26 (c) The probation department shall inform the minor, the
27 minor's parent or guardian, and all counsel of record that a copy
28 of the social study prepared for the hearing will be available 10
29 days prior to the hearing and may be obtained from the probation
30 officer.

31 (d) As used in Article 15 (commencing with Section 625) to
32 Article 18 (commencing with Section 725), inclusive:

33 (1) "Foster care" means residential care provided in any of the
34 settings described in Section 11402.

35 (2) "At risk of entering foster care" means that conditions
36 within a minor's family may necessitate his or her entry into
37 foster care unless those conditions are resolved.

38 (3) "Preadoptive parent" means a licensed foster parent who
39 has been approved for adoption by the State Department of

1 Social Services when it is acting as an adoption agency or by a
2 licensed adoption agency.

3 (4) “Date of entry into foster care” means the date that is 60
4 days after the date on which the minor was removed from his or
5 her home, unless one of the exceptions below applies:

6 (A) If the minor is detained pending foster care placement, and
7 remains detained for more than 60 days, then the date of entry
8 into foster care means the date the court adjudges the minor a
9 ward and orders the minor placed in foster care under the
10 supervision of the probation officer.

11 (B) If, before the minor is placed in foster care, the minor is
12 committed to a ranch, camp, school, or other institution pending
13 placement, and remains in that facility for more than 60 days,
14 then the “date of entry into foster care” is the date the minor is
15 physically placed in foster care.

16 (C) If at the time the wardship petition was filed, the minor
17 was a dependent of the juvenile court and in out-of-home
18 placement, then the “date of entry into foster care” is the earlier
19 of the date the juvenile court made a finding of abuse or neglect,
20 or 60 days after the date on which the child was removed from
21 his or her home.

22 (5) “Reasonable efforts” means:

23 (A) Efforts made to prevent or eliminate the need for
24 removing the minor from the minor’s home.

25 (B) Efforts to make it possible for the minor to return home,
26 including, but not limited to, case management, counseling,
27 parenting training, mentoring programs, vocational training,
28 educational services, substance abuse treatment, transportation,
29 and therapeutic day services.

30 (C) Efforts to complete whatever steps are necessary to
31 finalize a permanent plan for the minor.

32 (D) In child custody proceedings involving an Indian child,
33 “reasonable efforts” shall also include “active efforts” as defined
34 in Section 361.7.

35 (6) “Relative” means an adult who is related to the minor by
36 blood, adoption, or affinity within the fifth degree of kinship
37 including stepparents, stepsiblings, and all relatives whose status
38 is preceded by the words “great,” “great-great,” “grand,” or the
39 spouse of any of these persons even if the marriage was
40 terminated by death or dissolution. “Relative” shall also include

1 an “extended family member” as defined in the Indian Child
2 Welfare Act (25 U.S.C. Sec. 1903(2)).

3 (7) “Hearing” means a noticed proceeding with findings and
4 orders that are made on a case-by-case basis, heard by either of
5 the following:

6 (A) A judicial officer, in a courtroom, recorded by a court
7 reporter.

8 (B) An administrative panel, provided that the hearing is a
9 status review hearing and that the administrative panel meets the
10 following conditions:

11 (i) The administrative review shall be open to participation by
12 the minor and parents or legal guardians and all those persons
13 entitled to notice under subdivision (a).

14 (ii) The minor and his or her parents or legal guardians receive
15 proper notice as required in subdivision (a).

16 (iii) The administrative review panel is composed of persons
17 appointed by the presiding judge of the juvenile court, the
18 membership of which shall include at least one person who is not
19 responsible for the case management of, or delivery of services
20 to, the minor or the parents who are the subjects of the review.

21 (iv) The findings of the administrative review panel shall be
22 submitted to the juvenile court for the court’s approval and shall
23 become part of the official court record.

24 ~~SEC. 58.~~

25 *SEC. 53.* Section 10553.1 of the Welfare and Institutions
26 Code is amended to read:

27 10553.1. (a) Notwithstanding any other provision of law, the
28 director may enter into an agreement, in accordance with Section
29 1919 of Title 25 of the United States Code, with any California
30 Indian tribe or any out-of-state Indian tribe regarding the care
31 and custody of Indian children and jurisdiction over Indian child
32 custody proceedings, including, but not limited to, agreements
33 that provide for orderly transfer of jurisdiction on a case-by-case
34 basis, for exclusive tribal or state jurisdiction, or for concurrent
35 jurisdiction between the state and tribes.

36 (b) (1) An agreement under subdivision (a) regarding the care
37 and custody of Indian children shall provide for the delegation to
38 the tribe or tribes of the responsibility that would otherwise be
39 the responsibility of the county for the provision of child welfare

1 services or assistance payments under the AFDC-FC program, or
2 both.

3 (2) An agreement under subdivision (a) concerning the
4 provision of child welfare services shall ensure that a tribe meets
5 current service delivery standards provided for under Chapter 5
6 (commencing with Section 16500) of Part 4, and provides the
7 local matching share of costs required by Section 10101.

8 (3) An agreement under subdivision (a) concerning assistance
9 payments under the AFDC-FC program shall ensure that a tribe
10 meets current foster care standards provided for under Article 5
11 (commencing with Section 11400) of Chapter 2 of Part 3, and
12 provides the local matching share of costs required by Section
13 15200.

14 (c) Upon the implementation date of an agreement authorized
15 by subdivision (b), the county that would otherwise be
16 responsible for providing the child welfare services or AFDC-FC
17 payments specified in the agreement as being provided by the
18 tribe shall no longer be subject to that responsibility to children
19 served under the agreement.

20 (d) Upon the effective date of an agreement authorized by
21 subdivision (b), the tribe shall comply with fiscal reporting
22 requirements specified by the department for federal and state
23 reimbursement child welfare or AFDC-FC services.

24 (e) An Indian tribe that is a party to an agreement under
25 subdivision (a), shall, in accordance with the agreement, be
26 eligible to receive allocations of child welfare services funds
27 pursuant to Section 10102.

28 (f) Implementation of an agreement under subdivision (a) may
29 not be construed to impose liability upon, or to require
30 indemnification by, the participating county or the State of
31 California for any act or omission performed by an officer, agent,
32 or employee of the participating tribe pursuant to this section.

33 ~~SEC. 59.~~

34 *SEC. 54.* Section 16507.4 of the Welfare and Institutions
35 Code is amended to read:

36 16507.4. (a) Notwithstanding any other provisions of this
37 chapter, voluntary family reunification services shall be provided
38 without fee to families who qualify, or would qualify if
39 application had been made therefor, as recipients of public
40 assistance under the Aid to Families with Dependent Children

1 program. If the family is not qualified for aid, voluntary family
2 reunification services may be utilized, provided that the county
3 seeks reimbursement from the parent or guardian on a statewide
4 sliding scale according to income as determined by the State
5 Department of Social Services and approved by the Department
6 of Finance.

7 (b) An out-of-home placement of a minor without adjudication
8 by the juvenile court may occur only when all of the following
9 conditions exist:

10 (1) There is a mutual decision between the child's parent or
11 guardian and the county welfare department in accordance with
12 regulations promulgated by the State Department of Social
13 Services.

14 (2) There is a written agreement between the county welfare
15 department and the parent or guardian specifying the terms of the
16 voluntary placement. The State Department of Social Services
17 shall develop a form for voluntary placement agreements which
18 shall be used by all counties. The form shall indicate that foster
19 care under the Aid to Families with Dependent Children program
20 is available to those children.

21 (3) In the case of an Indian child, in accordance with Section
22 1913 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et
23 seq.), the following criteria are met:

24 (A) The parent or Indian custodian's consent to the voluntary
25 out-of-home placement is executed in writing at least 10 days
26 after the child's birth and recorded before a judge.

27 (B) The judge certifies that the terms and consequences of the
28 consent were fully explained in detail in English and were fully
29 understood by the parent or that they were interpreted into a
30 language that the parent understood.

31 (C) A parent of an Indian child may withdraw his or her
32 consent for any reason at any time and the child shall be returned
33 to the parent.

34 (c) In the case of a voluntary placement pending
35 relinquishment, a county welfare department shall have the
36 option of delegating to a licensed private adoption agency the
37 responsibility for placement by the county welfare department. If
38 such a delegation occurs, the voluntary placement agreement
39 shall be signed by the county welfare department, the child's
40 parent or guardian, and the licensed private adoption agency.

1 (d) The State Department of Social Services shall amend its
2 plan pursuant to Part E (commencing with Section 670) of
3 Subchapter IV of Chapter 7 of Title 42 of the United States Code
4 in order to conform to mandates of Public Law 96-272 for federal
5 financial participation in voluntary placements.

6 ~~SEC. 60.~~

7 *SEC. 55.* If the Commission on State Mandates determines
8 that this act contains costs mandated by the state, reimbursement
9 to local agencies and school districts for those costs shall be
10 made pursuant to Part 7 (commencing with Section 17500) of
11 Division 4 of Title 2 of the Government Code.

12 ~~SEC. 61.~~

13 *SEC. 56.* This act is an urgency statute necessary for the
14 immediate preservation of the public peace, health, or safety
15 within the meaning of Article IV of the Constitution and shall go
16 into immediate effect. The facts constituting the necessity are:

17 In order to clarify the scope of the Indian Child Welfare Act
18 for purposes of applying those provisions in this state, it is
19 necessary that the act take effect immediately.